Supreme Court, U.S.
FILED

No. 04- 031528 MAR 10 2004

OFFICE OF THE

IN THE

Supreme Court of the United States

GARFIELD PHILLIPS,

Petitioner,

vs.

JOHN MEZERA, ET. AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

GARFIELD PHILLIPS
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March 10, 2004

QUESTIONS PRESENTED

The City of Joliet's issued Notice of Emergency Condemnation contains Appeal provisions which enables a property owner to seek review, modification or withdraw of the condemning of their property for being cited as unfit for human habitation. If timely filed, the Notice of Appeal affords the property owner the right to be accorded a post deprivation administrative hearing. The Illinois Complied Statutes, as well as the Code of Ordinances for the City of Joliet contains provisions requiring a municipality to apply to the Circuit Court of the County in order to acquire authorization to carry out some form of punitive action against a property owner who fails to abate a cited property nuisance after receiving a written notice to do so. Paragraph 2 of 65 ILCS 5/11-31-1(a) along with Section 20-6 of the Code of Ordinances of the City of Joliet affords a property owner the right to be accorded with a post deprivation judicial proceeding. Neither does Paragraph 2 of 65 ILCS 5/11 -31-1(a), nor does Section 20-6 of the Code of Ordinances of the City of Joliet provide an exemption for Respondent City to initiate any form of punitive action against a property owner for alleged ordinance violations before acquiring Court authorization.

1. Contrasting Federal Court Decisions.

2. Whether Respondent City's failure to accord Petitioner with the full and equal benefit of a Section 20-6 post judicial proceedings deprived Petitioner of due process of law as guaranteed under the Fourteenth Amendment of the Constitution of the United States?

3. Whether the district court's dismissal of Counts III, IV & V of Petitioner's Second Amended Complaint and decision to grant Summary Judgement on Counts I & II of Petitioner's Second Amended Complaint was improper as a matter of law?

PARTIES TO THE PROCEEDING

Petitioner in this Court is Garfield Phillips, an African American citizen of the State of Illinois and a resident of the City of Joliet/Will County. Petitioner Phillips was a Petitioner in the United States Court of Appeals for the Seventh Circuit. He is the former owner of the real property known as 26-28 Union Street, Joliet, Illinois, (the "Property") and the former holder of the transferred 10 years U.S. Dept. of Housing and Urban Development Moderate Rehabilitation Housing Section 8 Contract (the "Contract") with the Housing Authority of Joliet and the former holder of a transferred 4 year Certificate of Inspection for the real property known as 26-28 Union Street, Joliet, Illinois. He has also represented himself at several district court proceedings, and is currently appealing the affirming of the district court's dismissal of his Section 1981(a) interference with rights to enforce contract and deprivation of full and equal benefit of all laws and proceeding for the security of property claim; Section 1982 deprivation of right to hold and lease real property claim; Section 1983's deprivation of rights under Fourteenth Amendment claim and common law Negligence claim, as set forth in his Second Amended Complaint (R.Doc. 23).

Respondents in this case are John Mezera, City Manager for the City of Joliet; James Shappard, Deputy City Manager for the City of Joliet; Joyce Toso, Building Maintenance Coordinator for the City of Joliet; Mary J. Kucharz, Assistant Corporation Counsel for the City of Joliet and the City of Joliet, a municipal corporation organized and existing under the Laws of the State of Illinois and located in the County of Will.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Garfield Phillips respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit in case 03-1068 and to review the decisions of the United States District Court for the Northern District of Illinois in case 00 C 3348.

OPINIONS BELOW

This Petition is being filed in this case by Petitioner proceeding in *Pro se*. The Petition contains what will be a joint Appendix in this case, which will be referred to as "A-". The Unpublished Order of December 11, 2003 will be referred to as the First Order at page # 9. The Memorandum Opinion and Order of November 25, 2002 will be referred to as the Second Order at page #10 . The Memorandum Opinion and Order of October 31, 2001 will be referred to as the Third Order at page # 11. The December 11, 2003 issued Unpublished Order of the United States Court of Appeals for the Seventh Circuit is reported as Garfield Phillips vs. John Mezera No. 03-1068 reproduced herein at A-1. The Memorandum Opinions and Orders of November 25, 2002 reproduced herein as A-3 and the Memorandum Opinion and Order of October 31, 2001 reproduced herein as A-23 are reported as Garfield Phillips vs. John Mezera, et. al., No. 00 C 3348.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Paragraph 4, of the City of Joliet issued Notice of Emergency Condemnation, provides: "You as owner or recipient of this notice shall have the right to seek review, modification or withdraw by filing a written Notice of Appeal with the City Manager within 72 hours of receipt of this notice. This notice shall be final and non-appealable if you have not sought review, modification or withdraw of this order within the 72 hours of receipt of this notice.

Paragraph 2 of 65 ILCS 5/11-31-1(a), provides: "The corporation authorities shall apply to the circuit court of the county in which the building is located (i) for an order authorizing action to be taken with respect to a building if the owner or owners of the building, including the lien holder of record, after at least 15 days written notice by mail to do so, have failed to put the building in a safe condition or to demolish it or (ii) for an order requiring the owner or owner of record to demolish, repair, or enclose the building or to remove garbage, debris, and other hazardous, noxious, or unhealthy substance or materials from the building."

Section 20-6 of the Code of Ordinances for the City of Joliet provides: "In the event the person upon whom notice has been served pursuant to this chapter has failed within the prescribed time to abate the nuisance, then the person who served notice or the citizen of the city who filed an affidavit with the department of community development asking that a nuisance be abated, shall file a complaint charging a violation of this division with the Circuit Court of the Twelfth Judicial Circuit or a magistrate thereof and demanding that the person upon whom notice was served be punished as provided in this chapter."

Title 42 U.S.C. Section 1981(a) provides, in relevant part: "All persons within the jurisdiction of the United States shall have the same right in every state and Territory to make and enforce contracts, . . , and to the full and equal benefits of all laws and proceedings for the security of . . . . property as is enjoyed by white citizens, ... "

Title 42 U.S.C. Section 1982 provides, in relevant part: "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens there of to . . . . . lease, . . . , hold, ... real and personal property."

Title 42 U.S.C. Section 1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

F.R.Civ.P. Rule 12(b)(6) provides, in relevant part: "Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion . . . . . (6) failure to state a claim upon which relief can be granted."

F.R.Civ.P. Rule 56(c) provides: "The judgement sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgement as a matter of law.

LR56.1(a)(3)(A)(B) provides: "With each motion for summary judgement filed pursuant to Fed.R.Civ.P. 56, the moving party shall serve and file: (3) a statement of material facts as to which the moving party contends there is no genuine issue and that entitle the moving party to a judgement as a matter of law, and that also includes: (A) description of the parties, and (B) all the facts supporting venue and jurisdiction in this Court.

The statement referred to in (3) shall consist of short numbered paragraphs, including within each paragraph specific reference to the affidavit, parts of the record, and other supporting materials relied upon to support the facts set forth in that paragraph. Failure to submit such a statement constitutes grounds for denial of the motion.

If additional material facts are submitted by the opposing party pursuant to section (b), the moving party may submit a concise reply in the form prescribed in that section for a response. All material facts set forth in the statement filed pursuant to section (b)(3)(B) will be deemed admitted unless controverted by the statement of the moving party."

STATEMENT OF JURISDICTION

On December 11, 2003, the United States Court of Appeals for the Seventh Circuit issued its Unpublished Order that affirmed the District Court's October 31, 2001 issued Memorandum Opinion and Order granting the defendants' FRCP Rule 12(b)(6) Motion to Dismiss on Counts III & IV Section 1983 claims and on Count V common law Negligence claim of Plaintiff's Second Amended Complaint, and affirmed the District Court's November 25, 2002 issued Memorandum Opinion and Order which granted Summary Judgement in favor of the Defendants and against the Plaintiff on Count I Section 1981(a) claims and on Count II Section 1982 claims of Plaintiff's Second Amended Complaint. The instant Petition is filed within 90 days of that decision, pursuant to Supreme Court Rule 13. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

STATEMENT OF THE CASE

On the 2nd day of March, 1998, during the annual inspection of the 28 Union Street's Section 8 rental unit of Petitioner Phillips' former 26-28 Union Street property. Housing Authority of Joliet Building Inspector, Augie Juricic, determined that the 28 Union Street unit was fit for human habitation and re-approved Petitioner Phillips' U.S. Department of HUD Moderate Rehabilitation Section 8 Housing Contract with the Housing Authority of Joliet (R.Doc. 69, Exhibit E).

On the 5th day of May, 1998, Respondent Toso issued a Notice of Property Maintenance Code Violations to Petitioner Phillips based upon a April 30, 1998 inspection of his former 26-28 Union Street property. The 28 Union Street unit was cited for three (3) minor code violations (R.Doc. 69, Exhibit F).

On June 3, 1998, Respondent City unwarrantedly disrupted water services to Petitioner Phillips' former 26-28 Union Street property and Respondent City's Police Officers made several trips to the "Property" informing the tenants that they had to move out of the "Property".

On the 5th day of June, 1998, Petitioner Phillips was separately informed by Respondent Toso and Housing Authority of Joliet's Section 8 Housing Coordinator, Joyce Johnson, that Respondent City wanted the tenants occupying the 26 Union Street rental unit out of the area because Respondent City felt that they were a nuisance to Respondent City.

On the 6th day of June 1998, Petitioner Phillips and his former 26-28 Union Street property tenants received Respondent Toso's June 4, 1998 issued Notice of Emergency Condemnation and Notice To Vacate Unsafe Property.

The Notice of Emergency Condemnation contained Appeal provisions for seeking review, modification or withdraw of the June 4, 1998 issued Notices (R.Doc. 69, Exhibit I).

On or about the 6th day of June, 1998, one of Respondent City's Neighborhood Services Inspector made a couple of trips to the 26-28 Union Street property informing the tenants about the limited amount of time that they had to vacate the property because Respondent City was going to board up the building and change the entrance door locks (R.Doc. 70 Exhibits L & M).

On or about the 8th day of June, 1998, Petitioner Phillips submitted a Notice of Appeal to Respondent Shapard which sought an administrative hearing on the June 6, 1998 received Notice of Emergency Condemnation (R.Doc. 70, Exhibit M), and on the very same day Respondent Mezera authorized the faxing of Respondent Toso's June 4, 1998 issued Notice to the Housing Authority of Joliet (R.Doc. 23, Exhibit F & R.Doc. 83 Exhibit A).

On or about the 11th day of June, 1998, Respondent Kucharz contacted Petitioner Phillips at his place of employment and informed him that a hearing would be set up upon Respondent Mezera returning from being out of town (R.Doc. 70, Exhibit N)

Without having had accorded Petitioner Phillips with his Requested Administrative Hearing for seeking the withdraw of Respondent Toso's June 4, 1998 issued Notice of Emergency Condemnation. Respondent City dispatched members of its Police Department whose officers forcible evicted the tenants from the "Property" as well as removed the locks from the front and back door entrances and replaced the original door locks with Respondent City's padlocks.

On or about the 10th day of July, 1998, Housing Authority of Joliet Section 8 Coordinator, Joyce Johnson, issued a notice to

Petitioner Phillips concerning the termination of his March 2, 1998 renewed Moderate Rehabilitation Housing Section 8 Contract. The notice indicated that the contract termination was based upon having had received documentation from Respondent City (R.Doc. 70, Exhibit P).

Petitioner Phillips initiated Federal Court judicial proceedings claiming Title 42 U.S.C. Section 1981(a) interference with right to enforce contract and deprivation of the full and equal benefits of all laws and proceedings for the security of property; Title 42 U.S.C. Section 1982 deprivation of right to lease and hold property; Title 42 U.S.C. Section 1983 deprivation of Fourteenth Amendment rights to due process of law.

On or about the 31st day of October, 2001, the district court granted Respondent City's FRCP Rule 12(b)(6) Motion to Dismiss for failure to state a claim upon which relief can be granted, dismissing the two Section 1983 claims and the common law Negligence Counts of Petitioner Phillips' Second Amended Complaint with prejudice. The Rule 12(b)(6) Motion was granted based upon Respondent City's claim that based upon its status as a home-rule municipality pursuant to Article VII of the Illinois Constitution, they were not required to adhere to state law contrary to local ordinances and that Respondent City was not required to obtain a court order to "condemn" Petitioner Phillips' 26-28 Union Street rental property (A-23).

On or about the 25th day of November, 2002, the district court granted a FRCP Rule 56(c) Motion for Summary Judgement in favor of the Respondents and against Petitioner Phillips, dismissing the Section 1981(a) and Section 1982 claims. The allowing of the Rule 56(c) Motion was based upon the district court claiming that Petitioner Phillips failed to meet his burden of proving a prima facie case of racial discrimination

and that Petitioner Phillips had not demonstrated that Joliet officials accorded more favorable treatment to similarly situated white property owners (A-3).

In issuing its Unpublished Order (First Order), the three panel judges of the Court of Appeal for the Seventh Circuit did not address whether the district court applied the correct analysis test toward making the determination to allow Respondent City's FRCP Rule 12(b)(6) Motion to Dismiss and Respondent City's FRCP Rule 56(c) Motion for Summary Judgement. The First Order did not address whether or not Respondent City was legally obligated to accord Petitioner Phillips with the due process of a post deprivation administrative hearing on his June 8, 1998 timely filed Notice of Appeal and whether or not Respondent City was legally obligated to accord Petitioner Phillips with the due process of a Section 20-6 post deprivation judicial proceeding as customarily accorded to other similarly situated white rental property owners. The First Order did not address whether or not Respondent Mezera's method of effectuating the termination of Petitioner Phillips' March 2, 1998 renewed U.S. Department of HUD Moderate Rehabilitation Housing Section 8 Contract with the Housing Authority of Joliet, represented an interference with Petitioner Phillips' rights to enforce his March 2, 1998 renewed U.S. Department of HUD Moderate Rehabilitation Section 8 Housing Contract.

The decision of the three panel judges of the Court of Appeals for the Seventh Circuit did not include any discussion revolving around what process Petitioner Phillips was due either under paragraph 4 of Respondent Toso's June 4, 1998 issued Notice of Emergency Condemnation for the City of Joliet, or under Section 20-6 of the Code of Ordinances of the City of Joliet.

On November 25, 2002, the district court, in issuing its Memorandum Opinion and Order ("Second Order") dismissing Count I Section 1981(a) claim & Count II Section 1982 claim of Petitioner's Second Amended Complaint (A-3), did not address Petitioner's LR56.1(b)(3) Response Opposing the Respondents' Motion for Summary Judgement contention concerning how the failure on the part of Respondent City's Statement of Material Facts to comply with the mandatory pleading requirements of LR56.1(a)(3)(A)(B) did not entitle Respondent City to Summary Judgement either on Count I Section 1981(a) claim or on Count II Section 1982 claim of the Second Amended Complaint (R.Doc. 68). Rather, the district court arrived at its determination by contrast comparison between the pleadings set forth in Respondent City's improperly pled LR56.1(a)(3)(A)(B) Statement of Material Facts and the unauthorized filed Additional Statement of Material Facts (R.Doc. 58 & R.Doc. 78) and selected pleadings set forth in Petitioner Phillips' properly pled LR56(a)(3)(B) Statement of Additional Material Facts (R.Doc. 69 & 70). The Second Order did not address Respondent City failure to disprove Petitioner's contention and evidence concerning Respondent Mezera authorizing the June 8, 1998 faxing of a copy of Respondent Toso's June 4, 1998 issued Notice of Condemnation to the Housing Authority of Joliet (R.Doc. 83, Exhibit A; R.Doc. 23, Exhibit F) that directly effectuated the Housing Authority of Joliet's July 10, 1998 issued decision to terminate Petitioner's March 2, 1998 renewed Section 8 Contract for the unit at 28 Union Street (R.Doc. 70, Exhibit P) and deprived Petitioner Phillips of his right to enforce his March 2, 1998 re-newed U.S. Dept. of HUD Moderate Rehabilitation Section 8 Housing Contract (R.Doc. 69, Exhibit E). The Second Order did not address Respondent

City's failure to disprove Petitioner's contention that unlike the contract interference imposed upon Petitioner Phillips. After James Wyatt continuously failed to appear at scheduled property inspection, failed to timely pay inspection fees and failed to abated cited nuisances at his various rental properties after having had been provided with numerous written notices to so and after having had been provided with numerous pre-deprivation proceedings, as well as was provided with numerous post-deprivation judicial proceedings (R.Doc. 69, page 9, paragraph 20 & Exhibit K1). Respondent Mezera did not take the initiative to authorize the faxing of documentation to the Housing Authority of Joliet's Section 8 Coordinator to effectuate terminating any of white rental property owner, James Wyatt's U.S. Dept. of HUD Moderate Rehabilitation Housing Section 8 Contracts with the Housing Authority of Joliet. The Second Order evaded addressing whether or not Respondent City failure to accord Petitioner Phillips with the due process of Section 20-6 post deprivation judicial proceedings while according the due process of Section 20-6 post deprivation judicial proceedings to several other similarly situated white rental property owners whom had repeatedly failed to abate property nuisances after having had received numerous pre-deprivation hearings, as well as had repeatedly failed to make themselves available to allow inspections, failed to timely pay inspection fees and repeated failure to abated building code violations after being served with numerous notices to do so (R.Doc. 70, Exhibits K1 – K4), constituted discrimination.

On October 31, 2001, in issuing its Memorandum Opinion and Order ("Third Order"), granting Respondent City's Motion to Dismiss Petitioner Phillips' Second Amended

Complaint pursuant to FRCP Rule 12(b)(6), dismissing Counts III & IV Section 1983's Fourteenth Amendment claim & Count V common law Negligence claim with prejudice. In making its determination to dismiss Count III, IV & V of Petitioner Phillips' Second Amended Complaint. The district court did not utilize the analysis test set forth in the Federal Practice and Procedure governing Rule 12(b)(6) motions for evaluating the formal sufficiency of a statement of claim under Title 42 U.S.C. Section 1983 and common law Negligence, as argued in Petitioner Phillips' Response Argument against Respondent City's FRCP Rule 12(b)(6) Motion to Dismiss (**See R.Doc. 27**). The Third Order equally did not address what form of due process that Plaintiff Phillips was entitled to under the "Policy" of paragraph 4 of Respondent City's Notice of Emergency Condemnation (R.Doc. 69, Exhibit I) and under the "Ordinance" of Section 20-6 of the Code of Ordinances for the City of Joliet (R.Doc. 69 "Exhibit C").

Petitioner Phillips challenged the district court's issued Memorandum Opinions and Orders of October 31, 2001 and November 25, 2002 on a number of grounds. Petitioner Phillips' Appeal Brief pleadings set forth uncontroverted facts and relevant legal arguments supportive of his contentions that the district court's deviation from utilizing the proper analysis test of FRCP Rule 12(b)(6) for evaluating a statement of claim brought forth pursuant to Title 42 U.S.C. Section 1983 and common law Negligence, as well as the district court deviation from utilizing the proper analysis test of FRCP Rule 56(c) for determining a Motion for Summary Judgement, rendered determinations that were improper as a matter of law.

INTRODUCTION

The Legislative branch of the State of Illinois enacted 65 ILCS 5/11-31-1(a), for the purpose to provide a municipality with a means to acquire Circuit Court authorization to carry out some form of punitive action against a property owner's failure to abate a cited property nuisance within a particular quantity of time after being served with notice to do so. The City of Joliet's adoption of Section 20-6 of the Code of Ordinances represent a mirror reflection of the provisions set forth in 65 ILCS 5/11-31-1(a). The district court's Memorandum Opinions and Orders of October 31, 2001 and November 25, 2002, as well as the U.S. Court of Appeals for the Seventh Circuit's subsequent affirmation did not address what type of process that the Petitioner was entitled to in order to protect his property interest, as well as for protecting his March 2, 1998 renewed U.S. Dept. of HUD Moderate Rehabilitation Section 8 Contract with the Housing Authority of Joliet. Therefore, this case presents an important procedural issue and a question of law that requires resolution by this court.

The Petition challenges Respondent City's failure to accord Petitioner Phillips with a post deprivation administrative hearing and failure to accord Petitioner Phillips with a post-deprivation judicial proceeding and for Respondent Mezera's interference with Petitioner Phillips' right to enforce contract with the Housing Authority of Joliet. The Petition seeks review of the improperly applied opinions on due process and summary judgement created by the district court decisions of October 31, 2001 and November 25, 2002, and the court of appeals decision of December 11, 2003, which conflicts with other decisions rendered by courts of the Seventh Circuit and various decisions rendered by this Court.

REASON FOR GRANTING WRIT

The district court and the court of appeals rendered decisions upholding Respondent City's deprivation of due process of law and equal protection of the laws and interference with contractual relationships. Those decisions, however, are in conflict with the decisions of the U.S. District Court N.D., as well as is in conflict with decisions of other district courts and this court's analysis test for evaluating the formal sufficiency of Section 1983 deprivation of rights claims under the 14th Amendment of the Constitution for the United States and the analysis test for allowing summary judgement. See *Blumenthal v. Murray,* 995 F.Supp. 831 (N.D. Ill. 1998); *Bordelon v. Chicago School Reform Board of Trustees,* 8 F.Supp.831 (N.D. 1998); *Chicago School Reform Board of Trustees v. Substance Inc.,* 79 F.Supp.2d 919 (N.D. 2000); *Kentucky v. Graham, Ky.,* 473 U.S. 159, 87 L.Ed.2d 114, on remand 791 F2d 932 105 S.Ct. 3099 (1985); *McKenzie v. City of Chicago,* 968 F .Supp. 1268 (N.D. Ill. 1997); *Murray v. Amoco Oil Co.,* 539 F.2d 1385 (C.A.5th 1976); *N & N Catering Company, Inc. v. City of Chicago,* 26 F.Supp.2d 1067 (N.D. Ill. 1998); *Anderson v. Liberty Lobby,* 477 U.S. 242, 106 S.Ct.2505 (1986); *Harding v. Edward J. Rosewell,* 22 F.Supp.2d 806 (N.D. Ill. 1998); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586 (1986); *Qvyjt v. Dr. Chhiu-Tsu Lin,* 932 F.Supp. 1100 (N.D. Ill. 1996); *Sisters of Providence of St. Mary of Wood v. City of Evanston,* 355 F.Supp. 396 (N.D. Ill. 1971); *West v. Atkins,* 108 S.Ct. 2250, 487 U.S. 42 101 L.Ed.2d 40 (1988). Because of those conflicts the writ ought to be granted.

Moreover, the court of appeals' Unpublished Order is in conflict with the factually indistinguished decisions of *Anderson v. Liberty Lobby,* 477 U.S. 242, 106 S.Ct. 2505 (1986); *Blumenthal v. Murray,* 995 F.Supp. 831

(N.D. Ill. 1998); *Bordelon v. Chicago School Reform Board of Trustees,* 8 F.Supp.2d 779 (N.D. Ill. 1998) *Celotex Corp. v. Catrett,* 477 U.S. 317, 106 S.Ct. 2548 (1986); *Chicago School Reform Board of Trustees v. Substance Inc.,* 79 F.Supp.2d 919 (N.D. Ill. 2000); *Harding v. Edward J. Rosewell,* 22 F.Supp.2d 806 (N.D. Ill. 1998); *Kentucky v. Graham, Ky.,* 473 U.S. 159, 87 L.Ed.2d 114, on remand 791 F2d 932,105 S.Ct. 3099 (1985); *Matsushita Elec. Indus. Co., v. Zenith Radio Corp.,* 475 U.S. 574, 586 (1986); *McKenzie v. City of Chicago,* 968 F.Supp. 1268 (N.D. Ill. 1997); *Murray v. Amoco Oil Co.,* C.A.5th 539 F.2d 1385 (1976); *N & N Catering Company, Inc. v. City of Chicago,* 26 F.Supp.2d 1067 (N.D. Ill.1998); *Peck v. Hoff,* 660 F.2d 371, 374 (1991); *Qvyjt v. Dr. Chhiu-Tsu Lin,* 932 F.Supp. 1100 (N.D. Ill. 1996); *Sisters of Providence of St. Mary of Wood v. City of Evanston,* 355 F.Supp. 396 (N.D.Ill. 1971) and *West v. Atkins,* 108 S.Ct. 2250, 487 U.S. 42 101 L.Ed.2d 40 (1988), cases the existence of which the court of appeals' Unpublished Order of December 11, 2003, does not even acknowledge.

Certiorari should be granted because the district court and the court of appeals in this matter has left courts in the Seventh Circuit with no guidance on how to determine deprivation of due process and with no guidance on the proper analysis test to be applied toward evaluating a Motion brought forth pursuant to FRCP Rule 12(b)(6) and a Motion brought forth pursuant to FRCP Rule 56(c) and LR56.1(a)(3)(A)(B). The writ ought to be granted to lend such guidance, as well as to vacate improvident decisions.

I. Contrasting Federal Court Decisions

The district court's Memorandum Opinion and Order of October 3, 2001, as well as the court of appeals' Unpublished Order of December 11, 2002 addressing Petitioner Phillips' Section 1983 deprivation of due process claims are arguably inconsistent with the Northern District's analysis test in *Blumenthal v. Murray,* 995 F.Supp. 831 (N.D. Ill. 1998). There the court recognized that "to satisfy Section 1983 claim, plaintiff must allege violation of a right secured by Constitution and laws of United State, and must show that alleged violation was committed by person action under color of state law." *14.

As well as is arguably inconsistent with this Court's analysis test in *Bordelon v. Chicago School Reform Board of Trustees,* 8 F.Supp.2d 779. There this court recognized that; "In ascertaining the nature and boundaries of the property interest protected for the purpose of due process analysis, the court must look to the instrument which creates the interest asserted." *5

As well as is arguably inconsistent with the Northern District's analysis test in *Chicago School Reform Board of Trustees v. Substance Inc.*79 F.Supp.2d 919 (N.D. Ill. 2000). There the court recognized that "Constitutional due process guarantee protects not only against denials of fundamental procedural fairness but also against exercise of power without reasonable justification in service to legitimate governmental objective." *3

As well as is arguably inconsistent with the Northern District's analysis test in *McKenzie v. City of Chicago,* 968 F.Supp. 1268 (N.D. Ill. 1997). The court recognized that; "Adversary hearings before neutral third party may be even more essential to guarantee procedural due process when government has direct pecuniary or political interest" *8

Also, purpose of requirement of notice and hearing under due process clause of the Fourteenth Amendment is not only to ensure abstract fair play to the individual but is more particularly to protect his use and possession of property from arbitrary encroachment, and to minimize substantively unfair and mistaken deprivation of property."*9

As well as is arguably inconsistent with this Court's analysis test in *Kentucky v. Graham, Ky.,* 105 S.Ct. 3099, 473 U.S. 159, 87 L.Ed.2d 114, on remand 791 F2d 932 (1985). There this court held that; "On the merit, to establish personal liability of a public official in a Section 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right, but more is required in an official-capacity action, for the governmental entity is liable under Section 1983 only when the entity itself is a *"moving force"* behind the deprivation."

As well as is arguably inconsistent with the Northern District's analysis test in *N & N Catering Company, Inc.,* 26 F.Supp.2d 1067 (N.D. Ill. 1998). There the court held that; "Procedural due process claims under the Fourteenth Amendment, brought pursuant to Section 1983, requires a court to first determine whether plaintiff has been deprived of a protected interest, and second, what process is due." *4

As well as is arguably inconsistent with the Northern District's analysis test in *Qvyjt v. Dr. Chhiu-Tsu Lin,* 932 F.Supp. 1100 (N.D. Ill. 1996). There the court held that; "Procedural due process requires two principal inquiries, first whether plaintiff was deprived of a protected property interest and, second, what process was due with respect to that deprivation." *2; "Whether person has property interest protected by due process is question which is determined by

reference to state law." *3; "Random and unauthorized conduct by state actors violates the due process clause only if there is no adequate post deprivation state law." *8

The District Court's Memorandum Opinion and Order of November 25, 2003, as well as the Court of Appeals' Unpublished Order of December 11, 2003 addressing Petitioner's Section 1981(a) and Section 1982 claims is arguably inconsistent with this Court's analysis test in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505 (1986). There this court held that; "Substantive law will identify which facts are material for the purpose of summary judgement, as only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgement: factual disputes that are irrelevant or unnecessary will not be counted." *2

As well as is arguably inconsistent with this Court's analysis test in *Celotex v. Catrett,* 477 U.S. 317, 106 S.Ct. 2548 (1986). There this court held that; "Regardless of whether the moving party accompanies its summary judgement motion with affidavits, the motion may and should be granted so long as whatever is before the district court demonstrates that the standard for entry of summary judgement set forth in Rule 56(c) is satisfied" *5. The court also held that; "Rule 56 must be construed not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury but also for the right of persons opposing such claims and defenses to demonstrate, in the manner provided by the rule prior to trial, that the claims and defenses have no factual basis." *9

As well as is arguably inconsistent with the Northern District's analysis test in *Harding v. Rosewell,* 22F.Supp.2d 806 (N.D. Ill. 1998). There the court held that; "Genuine

issues of fact exist as to whether employee in county treasurer's office had protectable property interest in his employment precluding summary judgement for county on due process claim asserted by employee following termination." *7

As well as is arguably inconsistent with the Northern District's analysis test in *Sisters of Providence of St Mary Wood v. City of Evanston,* 355 F.Supp. 396 (N.D. Ill. 1971). There the court held that; "summary judgement is rarely, if ever appropriate in civil rights disputes if motivation and intent are important to resolution of issues and never if serious questions of facts remain unresolved."

This court should resolve the conflicts that has arisen between the districts court's Memorandum Opinion and Orders of October 11, 2001; November 25, 2002 and the court of appeals Unpublished Order of December 11, 2003 and various Courts of the Seventh Circuit and this Court over the proper analysis tests for evaluating the sufficiency of a Section 1983 deprivation of rights claims under the Fourteenth Amendment of the Constitution for the United States and over the analysis tests used for allowing summary judgement. Also, this Court should resolve whether such actions of deprivation of post deprivation administrative and judicial proceedings and interference with contractual relationship on the part of Respondent Mezera either were discriminatory and unlawful or were non-discriminatory and lawful. Therefore, the writ ought to be granted.

II. Whether Respondent City's failure to accord Petitioner with the full and equal benefit of the Section 20-6 post deprivation judicial proceedings deprived Petitioner of due process of law as guaranteed under the Fourteenth Amendment of the Constitution of the United States?

The Fourteenth Amendment of the Constitution of the United States, in relevant part, states; **"Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person the equal protection of the laws."**

Paragraph 4, the policy of Respondent Toso's June 4, 1998 issued Notice of Emergency Condemnation, as codified and as applied, provides a post deprivation administrative hearing process that is due before Respondent City effectuates punitive action against a property owner's property.

And

Section 20-6, the section of the Code of Ordinances for the City of Joliet, as codified and as applied, provides a post deprivation judicial review process that is due before Respondent City can be authorized to initiate any form of punitive action against a property owner for alleged failure to abate a property nuisance within a prescribed period of time after receiving notice to do so.

In this present case, it has been Respondent City's *"customary practice"* to accord property owners whom fail to abate cited property nuisances, the courtesy of being provided with a Section 20-6 post deprivation judicial proceedings in order to acquire Court authorization to conduct punitive action against an alleged ordinance violator. Respondent City never contested Petitioner Phillips' contention of being deprived of the full and equal benefit of the *"customary practice"* of being afforded a Section 20-6 post deprivation judicial proceeding,

as accorded to similarly situated white rental property owners whom were allowed to receive post judicial proceedings to defer punitive action (See R.Doc. 70, Exhibit K1 – K4).

In making its October 31, 2001 determination on Counts III & IV Section 1983 claims and on Count V common law Negligence claim of Petitioner Phillips's Second Amended Complaint. Rather than utilizing the proper analysis tests for determining the nature of due process established by the courts in the matters of *Bordelon v. Chicago School Reform Board of Trustees,* 8 F.Supp.2d 779 (N.D. Ill. 1998); *Chicago School Reform Board of Trustees v. Substance Inc.,* 79 F.Supp.2d 919 (N.D. Ill. 2000); *McKenzie v. City of Chicago* 968 F.Supp. 1268 (N.D. Ill. 1997); *N & N Catering Company, Inc. v. City of Chicago* 26 F.Supp.2d 1067 (N.D. Ill. 1998) and *Qvyjt v. Dr. Chhiu-Tsu Lin,* 932 F.Supp. 1100 (N.D. Ill. 1996), as guide posts for making the determination of October 31, 2001. The district court based its determination on Respondent City's observation that because the City of Joliet is a home-rule municipality as defined by Article VII of the Illinois Constitution, it has the power to legislate concurrently with, and contrary to the State of Illinois. Once the City adopts ordinances contrary to Illinois state statutes, the ordinances prevail unless the General Assembly has preempted a home rule exercise of power, citing *People of the State of Illinois ex rel. Ryan v Village of Hanover Park* 311 Ill.App. 3d 515, 524-25, 724 N.E.2d 132, 138 (1st Dist. 1999); *Demick v. City of Joliet,* 135 F.Supp.2d 921 (N.D.Ill. 2001) as the legal basis for its decision which were not remotely relevant to addressing the issues raised in Petitioner Phillips' Second Amended Complaint (R.Doc. 23).

In *N & N,* the court held that; "The Fourteenth Amendment protects persons from state governmental deprivations of life, liberty or property without due process of law." citing *Pro-Eco*

Inc. v. Board of Communication of Jays County, 57 F.3d 505, 512 (7th Cir. 1995) A procedural due process claim under the Fourteenth Amendment is brought pursuant to 42 U.S.C. Section 1983, and "require[s]" a two-step analysis." Citing *Doherty v. City of Chicago,* 75 F.3d 318, 322 (7th Cir. 1996); *see also Greco v. Guss,* 775 F.2d 161, 170 (7th Cir. 1985). *4

This court should take judicial notice that this Court has repeatedly emphasized that; "The touchstone of due process is the protection of the individual against arbitrary action of government." *Lewis*, 118 S.Ct. at 1716 quoting *Wolf v. McDonnell,* 418 U.S. 539, 558, 94 S.Ct. 2963, 41 L.Ed 935 (1974). This due process guarantees protection not only against "the exercising of power without reasonable justification in the service of a legitimate governmental objective", *Lewis,* 118 S.Ct. at 1716 citing e.g. *Daniels v. Williams,* 474 US 327, 331, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986). The due process clause specifically protects those fundamental rights and liberties which are objectively, deeply rooted in this Nations history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.

In this present case, Respondent Mezera, acting through Respondent City, did not exercise his power with reasonable justification in the service of a legitimate governmental objective. It has been Respondent City's long standing *"customary practice"*, as codified in its adopted Ordinance i.e., Section 20-6 - to first seek judicial authorization before conducting any form of punitive action to deprive a property owner of his or her property rights. Rather, Respondent Mezera's actions acted out through Respondents Shapard, Toso and Kucharz, were motivated solely by racial animus.

Respondent Mezera chose to disregard according Petitioner Phillips with his requested post deprivation hearing for seeking the withdraw of Respondent Toso's June 4, 1998 issued Notice of Emergency Condemnation and chose to disregard according Petitioner Phillips with the due process of Section 20-6 post deprivation judicial proceedings before authorizing the conducting of punitive action against Plaintiff Phillips – i.e., forcible eviction of the tenants from Petitioner Phillips' former 26-28 Union Street property, unreasonable seizure of Petitioner Phillips' former 26-28 Union Street property and effectuating the termination of Petitioner Phillips' March 2, 1998 renewed U.S. Department of HUD Moderate Rehabilitation Section 8 Housing Contract with the Housing Authority of Joliet.

The due process of the Ordinance [Section 20-6] requires the according of post deprivation judicial proceedings. Since Respondent City failed to comply with its own Ordinance. And since neither did either the district court or the three panel judges of the court of appeals address what form of due process Petitioner Phillips was due under either the policy of paragraph 4 of Respondent City's Notice of Emergency Condemnation or Section 20-6 of the Ordinances of the City of Joliet. Then, the writ ought to be granted.

III. Whether the district court's dismissal of Counts III, IV & V of Petitioner's Second Amended Complaint with prejudice and the decision to grant Summary Judgement on Counts I & II of Petitioner's Second Amended Complaint was improper as a matter of law?

In his Response pleadings to the Respondent City's Motion to Dismiss Plaintiff's Second Amended Complaint Pursuant to FRCP Rule 12 (b)(6). Petitioner Phillips argued that according to Section 1356, the section of the Federal Practice and Procedure, which defines the purpose of the Rule 12(b)(6) Motion, in relevant part, states: **"The purpose of a motion under Rule 12(b)(6) is to test the formal sufficiency of the statement of claim for relief; it is not a procedure for resolving a contest about the facts or the merits of the case."** *Peck v. Hoff,* C.A. 8th 1981, 660 F.2d 371, 374, **citing Wright & Miller**; *Murray v. Amoco Oil Company,* C.A.5th, 1976, 539 F.2d 1385 (R.Doc. 27).

In its allowance of Respondent City's Motion to Dismiss Plaintiff's Second Amended Complaint Pursuant to FRCP Rule 12(b)(6). The district court did not grant the dismissal based upon an alleged failure on the part of Counts III & IV Section 1983 deprivation of rights claim & Count V common law Negligence claim to sufficiently set forth all of the essential elements necessary for establishing a claim under Title 42 U.S.C. Section 1983 and common law Negligence. Rather, the Memorandum Opinion and Order of October 31, 2001 was based upon conceding to Respondent City claim that; "Because the City of Joliet is a home-rule municipality as defined by Article VII of the Illinois Constitution, it has the power to legislate concurrently with, and contrary to, the State of Illinois. Once the City adopts ordinances contrary to Illinois

State statutes, the ordinance prevails unless the General Assembly has specifically preempted a home rule exercise of power. *See generally People of the State of Illinois ex rel. Ryan v. Village of Hanover Park,* 311 Ill. App. 3d 515, 524-25, 724 N.E.2d 132, 138 (1st Dist. 1999); *Demick v. City of Joliet,* 135 F.Supp. 2d 921 (N.D. Ill. 2001) No such preemption appears in the state statute cited by Plaintiff and therefore if the City has legislated otherwise, it was not necessary for Defendants to obtain a court order." (A-32).

It is important to note that Section 20-6 of the Code of Ordinances of the City of Joliet (R.Doc. 69, Exhibit C) represents the adopted ordinance that Respondent City legislated concurrent with 65 ILCS 5/11-31-1(a) requiring the applying to the circuit court of the county to secure court authorization for punitive action. This fact, the district court misconstrued in its evaluation of the nature of Petitioner Phillips' Counts III & IV Section 1983 deprivation of rights claims (A-2 to 34). Despite the pleadings set forth in Petitioner Phillips' Appeal Reply Brief highlighting the aforementioned. The court of appeal evaded address the district court's over-sight in its Unpublished Order of December 11, 2003 (A-1).

In the matter of *Bordelon v. Chicago School Reform Board Of Trustees,* the court held that; "To succeed in a Section 1983 action, plaintiff must established that the conduct complained of was carried out under the color of state law and that this conduct deprived him of rights, privileges or immunities guaranteed by the Constitution or laws of the United States." *4

Petitioner Phillips argued in his district court pleadings and court of appeals' pleadings that in the matter of *West v. Atkins,* N.C., 108 S.Ct. 2250, 487 U.S. 43 101 L.Ed.2d 40 (1998), this Court held that; "In order to state a claim under Title 42 U.S.C. Section 1983, plaintiff must allege violation of rights secured by the Constitution and laws of the United States and must

show that alleged deprivation was committed by persons acting under color of law."And in the matter of *Kentucky v. Graham, Ky.,* 105 S.Ct. 3099, 473 U.S. 159, 87 L.Ed.2d 114, on remand 781 F.2d 932 (1985), this court held that; "On merit, to establish personal liability of a public official in a Section 1983 action, it is enough to show that the official, acting under color of law, caused the deprivation of a federal right, but more is required in an official capacity action, for the governmental entity is liable under Section 1983 only when the entity itself is a *"moving force"* behind the deprivation."

Rather than reviewing and evaluating the manner in which Respondent Mezera utilized Respondent City as the instrument to serve as a *"moving force"* behind the interference with Petitioner Phillips' contractual relationship with the Housing Authority of Joliet (R.Doc. 70, Exhibit P) and the deprivation of post-deprivation administrative proceedings. As justification for affirming the district court's dismissal of Counts III & IV Section 1983 deprivation of rights claims and Count V common law Negligence claim of Petitioner Phillips' Second Amended Complaint. The court of appeals merely mentioned that the district court's dismissed the due-process counts claiming that because plaintiff's complaint demonstrated that the city gave him notice and an opportunity to be heard, which is all that due process requires" citing *Wainscott v. Henry,* 315, F.3d 844, 852-53 (7th Cir. 2003). *Wainscoti* is not remotely relevant to addressing the proper analysis test to be applied in deciding a Motion brought forth pursuant to FRCP Rule 12(b)(6) directed toward a Section 1983 deprivation of Fourteenth Amendment due process and common law Negligence claim. Because of this conflict the writ should be granted.

Petitioner Phillips argued in his court of appeals' Appeal Brief that in the matter of *Celotex Corporation v. Myrtle Nell Catrett,* 477 U.S. 317, 106 S.Ct. 2548 (1986), this Court held

that; "Rule 56 must be construed with due regard not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury but also for the rights of persons opposing such claims and defenses to demonstrate, in the manner provided by rule prior to trial, that the claims and defenses have no factual basis." Petitioner Phillips re-argued in his court of appeals Briefs that based upon the failure on the part of the Respondent City's Motion for Summary Judgement and LR56.1(a)(3)(A)(B) Statement of Material Facts to comply with the mandatory pleading requirements of LR56.1(a)(3)(A)(B) and failure show that there was no genuine issue as to any material fact that entitled the Respondent City to judgement as a matter of law. Then such failure constituted grounds for the denial of Respondent City's Motion for Summary Judgement.

It is important to note that the district court yielded from fully addressing the deficiencies set forth in Respondent City's improperly pled LR.56.1(a)(3)(A)(B) Statement of Material Facts (R.Doc. 58), which precluded review by the court of appeals.

In reviewing the pleadings of the Respondent City's improperly pled LR56.1(a)(3)(A)(B) Statement of Material Facts, the district court did not lean on the pleading requirements of either FRCP Rule 56(c) or LR56.1(a)(3)(A)(B) for determining whether or not Respondent City was entitled to Summary Judgement on Count I equal rights under the law claim and Count II property rights claim of Petitioner Phillips' Second Amended Complaint. Rather, in the face of being provided with four illustrated examples of how Respondent City accorded similarly situated white property owners with Section 20-6 post deprivation judicial proceedings (R.Doc. 70, Exhibits K1 –K4) and in the face of being provided with documentary evidence illustrating Respondent Mezera's interference with

Petitioner Phillips' contractual relationship with the Housing Authority of Joliet (R.Doc. 70 @ page 17, paragraph 34, Exhibit R). The district court enter judgement in favor of the Respondents, based on the claim that Petitioner Phillips having had not offered any evidence of intentional discrimination by Joliet officials (A-23). On appeal, Petitioner Phillips pled the summary judgement standards set forth in *Celotex v. Catrett,* 477 U.S. 317, 325 (1986); *Anderson v. Liberty Lobby Inc.,* U.S. 242, 248 (1986); *Bisciglia v. Kenosha Unified Sch. Dist. No. 1,* 45 F.3d 223, 226 (7th Cir. 1995); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586 (1986), as well as pled the failure on the part of Respondent City to disprove any of Petitioner Phillips' LR56.1(b)(3)(B) Statement of Additional Material Facts and the failure on the part of the Respondents' LR.56.1(a)(3)(A)(B) Statement of Material Facts to meet the mandatory pleading requirements of LR56.1(a)(3)(A)(B). Rather than reviewing R.Doc. 69 & 70's pleadings and evidence. The court of appeals claimed that; "The race-discrimination counts were disposed of at summary judgement after Phillips was unable to identify any similarly situated property owners whom the city had treated any better.

Petitioner Phillips reargued in his court of appeals' Brief that, based upon the failure on the part of the Respondent City's LR56.1(a)(3)(A)(B) Statement of Material Facts to meet the basic pleading requirements of Rule 56(c) and LR56.1(a)(3)(A)(B). Then, according to LR56.1(a)(3)(A)(B), such failure constituted grounds for the denial of the motion. Therefore, there did not either exist probable cause or legal justification for the court of appeals to affirm the district court's determination of November 25, 2002.

Petitioner Phillips' district court and court of appeals' pleadings argued the matter of *Sisters of Providence of St. Mary*

of Wood v. City of Evanston, 355 F.Supp. 396 (N.D. Ill 1971), where the district court held that; "Summary Judgement is rarely, if ever appropriate in civil rights disputes if motivation and intent are important to resolution of issues and never if serious questions of facts remain unresolved."

The deprivation of the entitled post administrative hearing for seeking review, modification or withdraw of Respondent City's June 4, 1998 issued Notice of Emergency Condemnation, (R.Doc. 70, Exhibit N) as well as Respondent Mezera's directed interference with Petitioner Phillips' March 2, 1998 renewed U.S. Dept. of HUD Moderate Rehabilitation Housing Section 8 Contract with the Housing Authority of Joliet (R.Doc. 70, Exhibit P), and Respondent City's failure to accord Petitioner Phillips with the due process of Respondent City's Section 20-6 post deprivation judicial proceedings as *"customarily"* accorded to other similarly situated white rental property owners (R.Doc. 70, Exhibits K1 – K4), shows the existence of genuine issues of material facts and unresolved issues. Upon an assiduous review and evaluation of the undisputed pleadings and documentary evidence of R.Doc. 23, 27, 68, 69 & 70, particularly R.Doc. 69 & 70's Exhibits C, E, H, K1-K4, L, M, N & P and paragraph 34 of R.Doc. 69. This Court will see that the First and Second Orders were not based upon utilizing the proper analysis tests for evaluating the conditions under which it is permissible to grant a Motion filed pursuant to FRCP Rule 56(c) and will see that the Third Order evaded addressing and misrepresented numerous material facts set forth in R.Doc. 23 – 27 and that the proper analysis test for evaluating the conditions under which it is permissible to grant a Motion filed pursuant to FRCP Rule 12(b)(6) was not applied to dismissing Petitioner

Phillips' Section 1983 deprivation of due process rights claims. Therefore, the writ ought to be granted.

CONCLUSION

Based upon the aforementioned, the fairest and just determination for this Honorable Court to make, as Guardian of the Law, would be that of granting this Petition for a Writ of Certiorari.

Respectfully submitted

By: _____

GARFIELD PHILLIPS
Petitioner in Pro se

Garfield Phillips
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(815) 722-7752

March 10, 2004

GARFIELD PHILLIPS,
Plaintiff-Appellant,
v.
JOHN MEZERA, et al.,
Defendants-Appellees.

No. 03-1068

United States Court of Appeals
For the Seventh Circuit

Submitted December 10, 2003
Decided December 11, 2003

UNPUBLISHED ORDER

Garfield Phillips, an African American, owned rental property in Joliet, Illinois. In late 1997 a city building inspector visited the property and cited it for 34 code violations. Three inspections and two administrative hearings later, the property was condemned as unfit for human habitation. Phillips requested another hearing to appeal the decision, but not was granted.

Phillips then sued the City of Joliet and four of its officials, alleging race discrimination, deprivation of property without due process, and negligence (a variation on the due-process claim). The district court dismissed the due-process counts because Phillips's own complaint demonstrated that the city gave him notice and an opportunity to be heard, which is all that due process requires. See *Wainscott v. Henry*, 315 F.3d 844, 852-53 (7th Cir. 2003). The race-discrimination counts were disposed

of at summary judgment after Phillips was unable to identify any similarly situated property owners whom the city had treated any better.

In his appellate brief, Phillips argues vaguely that the district court used improper "tools of analysis," mishandled certain discovery matters, and failed to resolve various unspecified "material facts." Even liberally construed, see *Anderson v. Hardman*, 241 F.3d 544, 545 (7th Cir. 2001), these arguments fail to call into question the correctness of the district court's rulings.

* After an examination of the appellant's brief and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the brief and the record. *See* Fed. R. App. P. 34(a)(2).

AFFIRMED.

GARFIELD PHILLIPS,

Plaintiff,

v.

JOHN MEZERA, et al.,

Defendants.

United States District Court
Northern District of Illinois

No. 00 C 3348

MEMORANDUM OPINION AND ORDER

Plaintiff Garfield Phillips ("Phillips") owned a two-unit apartment building in the City of Joliet. Citing multiple uncorrected housing code violations, Joliet officials evicted Phillips' tenants in July 1998. In this lawsuit, Phillips alleges that Joliet officials violated his civil rights when they evicted his tenants and interfered in the renewal of his HUD Section 8 Moderate Housing Contract. Those named as Defendants include: John Mezera ("Mezera"), the City Manager for the City of Joliet; Joyce Toso ("Toso"), the Property Maintenance Coordinator for the City of Joliet; Mary Kucharz ("Kucharz"), Assistant Corporation Counsel for the City of Joliet; and James Shapard ("Shapard"), Deputy City Manager for the City of Joliet (collectively "Defendants"). On October 31, 2001, this court dismissed all but two of Phillips; five causes of action against the City of Joliet and several of its employees.[1] *Phillips v. Mezera*, No. 00 C 3348,

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[1] Phillips complained in his original complaint that he was deprived of his property without due process of law and that city officials acted negligently with regard to his case. As explained in the court's earlier opinion, Phillips' own allegations defeated his due process claims,

2001 WL 1345983 (N.D. Ill. Oct. 31, 2001). Defendants have now moved for summary judgment on the remaining two counts. Because Phillips is *pro se*, Defendants provided him with a notice describing the appropriate response to such a motion, and the matter is now full briefed.

FACTUAL BACKGROUND

The following facts are taken from the parties' Local rule 56.1(a)(3) and (b)(3) Statements of Material Facts.[2] As filed, these Statements reflected the existence of a number of factual disputes, but, as explained below, the court concludes the disputes are not material to the outcome of this case.

Phillips, an African-American male, is the former owner of a two-unit dwelling at 26-28 Union Street in Joliet, Illinois. Until July 1998, Phillips had a HUD Section 8 Moderate Rehabilitation Housing Contract with the Housing Authority of Joliet ("HAJ").[3]
His contract for 28 Union Street was terminated in July 1998 after the HAJ learned that Phillips' tenants had been evicted and his property condemned by Defendant City of Joliet ("Joliet"). Phillips provides a letter from Joyce Johnson of the HAJ as evidence of the cancellation of his Section 8

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and he did not identify any legally cognizable tort claims. What survived the earlier motion to dismiss were Phillips' claims for violation of Sections 1981 and 1982 of the Civil Rights Act of 1866. The parties pursued discovery on those claims, and Defendants now seek summary judgment in their favor.

[2] Phillips has objected to Defendants' Statement of Additional Mater Facts, filed on August 1, 2002, arguing that this Statement is not contemplated by the court's rules. The court need not rule on this objection, however, because in need not consider Defendants; additional facts in order to conclude that Defendants are entitled to judgment. For purposes of this ruling, the court has considered only these materials: Defendants' Statement of Material Facts (hereinafter "Defs." 56.1"), Defendants' Supplement to Statement of Material Facts ("Defs.' Supp."), Phillips' Statement of Additional Material Facts ("Pl.'s 56.1 Resp."), and documents submitted in support of those statements.

[3] Neither party has offered an explanation of the significance of such a contract, but the court understand that it authorizes Phillips to rent property to person eligible for federally-subsidized housing.

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contract. (Letter from Johnson to Phillips of 7/10/98, Ex. P to Pl.'s 56.1 Resp.) Because this letter, offered by Phillips as evidence of Defendants' wrongdoing, makes no mention of the Section 8 contract for 26 Union Street, the court concludes that for the purpose os this decision, only the contract for 28 Union Street is at issue. Phillips claims the eviction and condemnation of his property was a product of race discrimination by Joliet officials. He also claims the cancellation of his Section 8 contract made it impossible for him to make his monthly mortgage payments on the property, resulting in a foreclosure action. (Pl.'s 56.1 Resp. at 7.)

Joliet maintains that it inspects all rental housing within its corporate limits pursuant to the Code of Ordinance, without regard to the race of the property owner. In fact, Joliet officials do not maintain records indicating the race of property owners, and Defendants insist they do not take race into account in any official business. In particular, Defendants urge they did not take action in regard to 26-28 Union Street based upon Phillips' race, nor did they discriminate against Phillips, (*Id.* ¶¶ 16-21, 23-37; Defs.' Supp. ¶¶ 81-83, 86, 87, 89.)

As the uncontested facts show, Phillips purchased the two-unit property at 26-28 Union Street in December 1994. As part of the property transaction, Phillips became the holder of a fifteen-year HUD Section 8 Moderate Housing contract issued on April 1, 1985. (Pl.'s 56.1 Resp. ¶ 1.) Also received in the property transfer was a four-year Certificate of Inspection issued by the City of Joliet to the previous owner. (*Id.* ¶ 4.) On August 29, 1997, Defendant Joyce Toso sent correspondence to Phillips notifying him that an inspection of his property was scheduled for September 5, 1997. (Toso Aff. ¶ 12, Ex. 3 to Defs.' 56.1.) Due to Phillips' absence from the property, no inspection occurred on that date. (Defs. 56.1 ¶ 43.) The record is silent as to the reasons for Phillips' absence; nor has either party explained what instructions, if any, Phillips was given about re-scheduling the inspection.

Phillips next received a Notice of Pending Closure Action from the City of Joliet dated September 25, 1997, stating that if he failed to allow an inspection by October 6,1997, his building would be posted unfit for occupancy. (Notice of Pending Closure Action of 9/25/97, Ex. 3 to Defs.'

56.1.) On October 6, 1997 Ken Alexander ("Alexander"), an inspector for the Neighborhood Service Department for the City of Joliet, inspected the property and found 34 code violations. (List of Violations from Inspection of 10/6/97, Ex. 3 to Defs.' 56.1.) Included among the violations were the lack of a smoke detector in one unit, a leaky faucet, windows that did not open or were broken, a defective guard rail on the porch, a defective stove, and various electric problems. (Emergency Action Notice of 10/10/97 and List of Violations from Inspection of 10/6/97, Ex. 3 to Defs.' 56.1.) On November 19,1997, Phillips called Alexander and stated that he needed thirty days to make the repairs. A reinspection was scheduled for December 19, 1997.

For reasons again unexplained, Phillips was not present for the Inspection on December 19. (Defs.' 56.1 ¶¶ 47, 48.) On January 28, 1998, Alexander returned to attempt inspection again, but again Phillips was not at the property (there is no indication whether he had been advised of this date.) (*Id.* ¶ 49.) The same day, Toso issued another Notice of Pending Closure Action; that notice warned that unless Phillips corrected the violations before March 11, 1998, Joliet officials would post the building not approved for occupancy. (*Id.* ¶ 50.)

On March 11, 1998 Alexander inspected 26 Union Street and found that the violations in that unit had not been corrected. (Alexander Aff. ¶ 18, Toso Aff. ¶ 21, Exs. 2 & 3 to Defs.' 56.1.) Because neither Phillips nor the tenant was present at 28 Union Street, Alexander was unable to inspect that unit. Both properties were post "(n)ot approved for occupancy." (*Id.*) On March 13, 1998, Toso issued a third Notice of Pending Closure Action indicating a full inspection had to be conducted by March 27, 1998. (*Id.* ¶ 52.) Also on March 13, Joliet officials advised Phillips' tenants that if their landlord failed to allow an inspection prior to March 27, 1998, the building would have to be vacated. (Notices of Pending Closure Action of 3/13/98, Ex. 3 to Defs.' 56.1.) Alexander inspected the property on March 27, 1998 and found 26 code violations, (Defs.' 56.1 ¶ 53), many of them identical to those found on October 6, 1997. (List of Violations from Inspection of 3/27/98, Ex. 3 to Defs.' 56.1)

On April 6, 1998, Toso sent a Notice of Property Maintenance Code

Violations to Phillips indicating that his property had to be reinspected due to the code violations found on March 27, 1998. (Toso Aff. ¶ 224, Ex. 3 to Defs.' 56.1.) The mailing included a recommended procedure for correcting each of the 26 violations. (List of Violations from Inspection of 4/30/98, Ex. 3 to Defs.' 56.1.) The Notice explained that failure to correct the violations could result in legal action and notified Phillips that he had a right to a hearing concerning the violations, a right he could exercise by filing a written hearing request with the City Manager within 72 hours of receipt of the notice. (Letter from Toso to Phillips of 4/6/98, Ex. 3 to Defs.' 56.1.) Joliet officials also sent Phillips an invoice for $168.00 in reinspection fees. The April 6, 1998 invoice notes that Phillips previously owed the city $114.00, and currently owed $54.00, for a total of $168.00. (Rental inspection invoice for Reinspection of 4/6/98, Ex. 3 to Defs.' 56.1.) Defendants do not provide an explanation of how these figures were calculated, although Toso's letter of April 6, 1998 indicates that there is a $10.00 per unit charge for the first reinspection, with a $18.00 charge per unit for all subsequent reinspections. (Letter from Toso to Phillips of 4/6/98, Ex. 3 to Defs.' 56.1) On April 21, 1998, Kucharz sent a Notice of Hearing to Phillips pursuant to Joliet ordinance 8-160.[4] There is no indication that Phillips himself requested the hearing; instead, it appears to have been scheduled at the initiative of city officials. (Notice of Hearing of 4/21/98, Ex. 4 to Defs.' 56.1.)

A. The April 29, 1998 Hearing

The City of Joliet Neighborhood Services Department conducted a hearing to revoke or suspend Phillips' Certificate of Inspection on April

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[4] Section 8-160(a) of the Joliet Code states, in relevant part, that : "[i]f the city manager, after a hearing before the city manager or the city manager's designee determines that any person has filed to comply with this chapter, the city manager may suspend or revoke the certificate of inspection held by that person. Such a hearing shall be held not less than five (5) calendar days after notice of time, place and subject of the hearing has been received by the certificate holder at the holder's last known address or business address." The court assumes that a hearing must be held before the city manager or designee can revoke a certificate of inspection.

29, 1998. (Defs.' 56.1 ¶ 55.) Phillips, Toso, Assistant corporation Counsel Mary Kucharz, and Deputy City Manager James Shapard participated in this hearing, (Defs.' 56.1 ¶ 56), with Shapard acting as the hearing officer. (Shapard Aff. ¶ 16, Ex. 6 to Defs.' 56.1 Supplement to Statement of Material Facts.)

At the hearing, Phillips was advised (it is unclear by whom) to repair the property to cure the code violations and pay the outstanding fees for inspection so that he could get a Certificate of Inspection. (Defs.' 56.1 ¶ 55.) Phillips does not dispute this exchange, but adds that Shapard threateningly told him, "I'm gonna [sic] put you out of business, we're gonna [sic] shut you down!" and "I'm shutting you down, you're out of business!' (Phillips Aff. ¶ 9, (Ex. H to Pl.'s 56.1 Resp.) Shapard denies making such statements. (Defs.' 56.1 ¶ 57.)

B. After the April 29, 1998 Hearing

On April 30, 1998, Alexander inspected the property and found that no changes had been made to cure the existing code violations. (Defs.' 56.1 ¶ 58.) Defendants do not explain why the re-inspection occurred only one day after the hearing, nor do they suggest what Phillips might have done in a few hours to correct the deficiencies, but the court understands that Phillips was notified of the code violations on April 6, 1998, at latest. Phillips alleges that Toso told him he would not be given additional time to resolve the code violations and that the reason for shutting down the property was 'payback' because Phillips re-rented his former 509 Sherman Street property.[5] (Phillips Aff. ¶ 10, Ex. H to Pl.'s 56.1 Resp.) On May 4, 1998 the city issued Phillips a Final Notice for Payment of Inspection Fees and Notice of Lack of Current Certificate of Inspection. (*Id.* ¶ 59.) The notice stated that rental inspection fees of $168.00 must be paid in full immediately, and warned, "[s]hould you fail to pay the outstanding balance within that time, not only will your building be posted but your account will be sent to the City of Joliet Legal Department for legal proceedings in

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[5] Neither party makes any further mention of property at 509 Sherman Street.

order to collect the balance due." (Final Notice for Payment of Inspection Fees & Notice of Lack of Current Certificate of Inspection of 5/4/98, Ex. 3 to Defs. 56.1.) The following day, Phillips was sent another Notice of Property Maintenance Code Violations and a rental inspection invoice with a balance of $222.00 ($54.00 more than the previous balance of $168.00). (Defs.' 56.1 ¶ 60.) On May 26, 1998, Kucharz sent Phillips notice of a second hearing scheduled for June 3, 1998. (*Id.* ¶ 61.) On May 29, 1998, Alexander attempted to inspect the property but Phillips was not present. The record reflects that Phillips was notified about this inspection; the List of Violations from April 30, 1998 inspection states that re-inspection was scheduled for May 29, 1998, as does the Rental Inspection Invoice of May 5, 1998. (List of Violations of 4/30/98 & Rental Inspection Invoice for Reinspection of 4/6/98, Ex. 3 to Defs.' 56.1.) Phillips has not explained why he was repeatedly unavailable for inspections to his property. Alexander was able to inspect 26 Union Street because the tenant was home, and found that conditions had not improved. (Defs.' 56.1 ¶ 62.) On June 1, 1998, Alexander posted the property (both units, the court presumes) as "[n]ot approved for occupancy" because of its poor condition and Phillips' failure to pay inspection fees. (*Id.* ¶ 63.)

C. The June 3, 1998 Status Hearing

The City of Joliet Neighborhood Services Division held a status hearing on June 3, 1998. Shapard preside; Phillips, Kucharz, Toso, and possibly city Manager John Mezera attended. (Defs.' 56.1 ¶ 64.) It is unclear who initiated the hearing, but Phillips received notice from Kucharz dated May 26, 1998. (Notice of Hearing of 5/16/98, Ex. 4 to Defs.' 56.1.) Defendants do not deny Phillips' claim that he paid the city $222.00 on June 3. (Phillips' Aff. ¶ 11, Ex. H. to Pl.'s 56.1 Resp.) At the status hearing, Shapard ordered the property to be posted and declared unfit for human habitation. Phillips claims that Shapard told him: "I can not reverse my decision, as a matter of fact I spoke with Mezera and informed him that I condemned the building and Mezera jumped for joy." (Id. ¶ 12.) Phillips claims that Mezera was present and asked him "[w]here

were you last night when you should have been having the violations corrected, watch the Bulls?" He apparently hurled sever other insults at Phillips, and told Phillips to "[g]et a job. We want the building shut down because you're renting to gangbangers and they are selling drugs from that house." Mezera told Plaintiff that he was "gonna [sic] call [the Housing Authority of Joliet] and have your Section 8 certificate cancelled because there should not be any Section 8 tenants living in the 28 Union Street premises. . . .When you get some good tenants, you bring their names down here and the City will run criminal background checks to see whether or not your tenants are gangbangers." (Id. ¶ 13.) Mezera denies making such statements, and Defendants claim he was not even present at the hearing. (Defs.' Resp ¶ 6; Defs.' 56.1 ¶ 40.)[6]

D. After the June 3, 1998 Hearing

The water at 26-28 Union Street was shut off accidentally on June 3, 1998 because an official had been misinformed that the property was vacant. The city corrected the problem within 24 hours. (Defs.' Resp ¶ 15; Defs.' Resp. to Pl.'s First Set of Interrogatories ¶ 9, Ex. T to Pl.'s 56.1 Resp.) Phillips received a Notice of Emergency Condemnation from Toso dated June 4, 1998, stating that his property was again found to be in violation of the BOCA National Property Maintenance Code,[7] and that the property was going to be condemned. It is unclear whether Toso was referring to a particular inspection. The letter notified Phillips of his right to seek review of the decision by filing a written Notice of Appeal with the City Manager within 72 hours of receipt of the notice. (Notice of Emergency Condemnation of 6/4/98, Ex. 3 to Defs.' 56.1.) Phillips claims that on June 8, 1998 he presented Shapard with a Notice of Appeal, and

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[6] If Mezera did in fact attend the hearing, the court expects Phillips would have questioned him concerning Shapard's statement that he "jumped for joy" on learning that the building had been condemned.

[7] The parties do not identify BOCA, but he court understands this as a reference to the Mode Codes adopted by Building Officials and Code Administrators, International, Inc.

Kucharz informed him that a hearing would be scheduled. (Pl.'s 56.1 Resp ¶ 27.) There is no dispute that Joliet officials never contacted Phillips about a hearing *(Id.* ¶ 29.)

On June 4, 1998, Toso sent Phillips' tenants notice to vacate the property because the city had condemned it as unfit for human habitation. (Defs.' 56.1 ¶ 65.) On June 5, 1998, Defendants claim that Phillips notified Toso in person at City Hall that he would fix the violations in 28 Union Street by the weekend and asked that the tenants be allowed to stay. Toso replied that all tenants would have to vacate the premises until the building was approved for occupancy. Defendants allege Phillips agreed to "go along" with forcing out the tenants at 26 Union Street. (*Id.* ¶ 66.) Phillips offers a different version of events, claiming that Toso told him there was "no problem" with the tenants staying in the 28 Union Street unit, but the city wanted the tenants residing in 26 Union Street evicted because they were a public nuisance. (Phillips" Aff. ¶ 17, Ex. H to Pl.'s 56.1.) Phillips claims that on June 6, 1998, Alexander told Phillips' tenants, Carlotta Osborne (28 Union Street) and Lawrence Travis (26 Union Street), that they had three days to move out of their units because the building had been condemned and the locks on the entrance doors were going to be changed. (Pl.'s 56.1 Resp. ¶¶ 25, 26.) Phillips claims that during the week of June 8-12, 1998, the original locks were removed and the doors at 26-28 Union Street were padlocked. (*Id.* ¶ 28.) Defendants counter that as of June 12, 1998, Phillips' tenants were still living at the address. (Defs.' Resp. ¶ 25.) Defendants deny ordering anyone to padlock the doors, and Phillips has offered no proof that events unfolded in this manner. (Defs.' Answer to Pl.'s First Set of Interrogatories ¶ 7, Ex. T to Pl.'s 56.1 Resp.) The parties agree that as of June 25, 1998, the building was vacant and posted with "no trespassing" signs. (Defs.' 56.1 ¶ 68.)

E. Phillip's Contract with the Housing Authority of Joliet

Phillips claims that Defendants intentionally influenced the Housing Authority of Joliet ("HAJ") to terminate his Section 8 Moderate Rehabilitation Housing Contract. On June 5, 1998, Joyce Johnson

("Johnson"), Section 8 Housing Coordinator for the HAJ, allegedly told Phillips that she wanted the tenants in 26 Union Street to move out because they were a nuisance. (Phillips Aff. ¶ 16, Ex. H to Pl.'s 56.1 Resp.)[8] Phillips claims Toso told him the same thing that same day; she wanted the tenants residing in 26 Union Street to move. (*Id.* ¶ 17.)

A month later, Phillips received word from Johnson concerning the 28 Union Street unit. By letter dated July 10, 1998, Johnson stated: "According to the documentation received from the City of Joliet and the hearings held with yourself and the City of Joliet, you do not have an inspection permit to rent [28 Union Street] and the property is considered unfit for human habitation. Therefore, the Housing Authority of Joliet has not [sic] choice but to terminate you [sic] Moderate Rehabilitation Contract and use that funding to allow [the former tenant, Carlotta Osborne, who was forced out]...to relocate." (Letter from Johnson to Phillips of 7/10/98, Ex. P to Pl.'s 56.1 Resp.) Phillips blames the termination of his contract on Defendants, but apart from the statements in Johnson's July 10, 1998 letter, Phillips offers no evidence indicating that Joliet officials ever urged the HAJ to cancel his Section 8 contract.

Defendants maintain that the HAJ is not a department of the City of Joliet and the City has no control over the operations or employees of the HAJ. Defendants assert, further, that Mezera has no authority to terminate a contract between the HAJ and another person, and that neither Mezera nor any other Joliet official contacted the HAJ regarding Phillips' Section 8 contract. (Defs.' 56.1 ¶¶ 38-41.) Defendants do not recall having contacted Johnson regarding 26-28 Union Street, but they point out that Johnson sometimes attends City of Joliet administrative hearings regarding real property. (Defs.' Answers to Pl.'s First Set of Interrogatories ¶ 5, Ex. T to Pl.'s 56.1 Resp.)

F. Events since 1998

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[8] The court notes that Defendants claim Phillips' Section 8 contract for Union Street was terminated in March 1998. (Defs.' Resp. ¶ 34.)

In May 1999, Joliet initiated legal action against Phillips and the Chemical Mortgage Company (presumably Phillip's mortgage lender) pursuant to Chapter 65 of the Illinois Compiled Statutes, as amended, Section 5/11-31-1 et seq. And Section 5/1113-15, and Section 8-122 et seq. Of the Code of Ordinances of Joliet. (Complaint for injunction, Demolition, and Other Relief, Ex. Z to Pl.'s 56.1 Resp.) Citing the property's history of disrepair, the City sought authorization to tear down the building. (*Id.*) In October 1999, the Circuit Court of the Twelfth Judicial Circuit, Will County, authorized Joliet to demolish the building at 26-28 Union Street, and ordered that the costs of abating the nuisance caused by the demolition be charged to the owner of the property. (Decree of Demolition, Ex. Z, Pl.'s 56.1 Resp.)

DISCUSSION

A. Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." FED.R.CIV.P. 56(c); *see also Flores v. Preferred Tech. Group*, 182 F.3d 512, 514 (7th Cir. 1999). In determining whether factual issues exist, the court must view all the evidence in the light most favorable to the non-moving party. *Flores*, 182 F.3d at 514. An issue is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Carter v. American Oil Co.*, 139 F.3d 1158, 1161 (7th Cir. 1998) (citation omitted). Only disputes that could affect the outcome of the suit under governing law will preclude an entry of judgment for the moving party.

B. Sections 1981 and 1982

In Counts I and II of his Second Amended Complaint, Phillips alleges violations of 42 U.S.C. §§ 1981(a) and 1982, which guarantee that all citizens have the same rights as white citizens to make and enforce contracts (1981) and to lease and convey real property (1982). Section 1981 addresses racial discrimination in contractual relationships. As amended by the Civil Rights Act of 1991, the statute read in relevant part:

> (a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . .as is enjoyed by white citizens . . . .
> (b) For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.
> (c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S.C. § 1981(a)-(b). Section 1982 deals with discrimination in property transactions. It states:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

42 U.S.C. § 1982. Section 1982 was enacted to enable Congress to enforce the Thirteenth Amendment and, particularly, to prohibit all racial discrimination, private and public, in the sale and rental of property. *Jones v. Alfred H. Mayer Co* , 392 U.S. 409, 437 (1968).

Because of their common origin in the Civil Rights Act of 1866 and their common purpose, § 1981 and § 1982 are generally construed in

tandem. See *Tillman v. Wheaton-Haven Recreation Ass'n. Inc.*, 410 U.S. 431, 439-40 (1973). A claim under either section is established when a plaintiff shows (1) he is a member of a racial minority; (2) the defendant has an intent to discriminate on the basis of race; and (3) the discrimination involved one of the activities enumerated in the statutes (i.e. making and enforcing a contract or owning property). *Morris v Office Max, Inc.*, 89 F.32d 411, 413 (7th Cir. 1996). Defendants do not contest that Phillips is a member of a racial minority; rather, they argue that Phillips' claims fail under prongs two and three. Because Defendants' arguments concerning the third prong can be addressed readily, the court turns first to the issue of whether property or contract rights are involved here, and then addresses the issue of intentional discrimination.

1. Do Phillips' Claims Involve Contract and Property Rights Contemplated By Sections 1981 and 1982?

Defendants argue that they did not interfere with Phillips' right to contract with the HAJ, nor did they deprive him of the right to own and hld 26-28 Union Street. They argue that because the HAJ is not a department of the City of Joliet and the city has no control over the policies and procedures of the HAJ, there can be no link between their actions and the cancellation of Phillips' Section 8 contract. Finally, Defendants argue that Phillips' claim under Section 1982 fails because they did not deprive him of the ownership of his property; rather, they condemned it. If Phillips ultimately lost his property due to mortgage foreclosure, this is beside the point, according to Defendants.

These arguments challenge not only the factual basis for Phillips's claims, but also their legal sufficiency. Because, as discussed below, Phillips has not offered evidence of intentional discrimination by Joliet officials. Defendants are entitled to summary judgment on these claims. The court therefore need not reach the factual issues of whether Joliet officials actually had authority to interfere with this HAJ contract or whether Phillips has presented evidence that they did take such action. To the extent that Defendants challenge the legal sufficiency of Phillips'

claims, however, their objection will be overruled. Phillips alleges tha Defendants improperly interfered with his relationship with the HAJ an urged the HAJ to terminate his Section 8 contract. This, according t Phillips, led directly to his inability to make mortgage payments an ultimately to the foreclosure of his property. Section 1981 proscribes no only discrimination by the contracting party (here HAJ), but als discriminatory interference by third parties. Vakharia v. Swedish Covenant Hosp., 765 F. Supp. 461, 471 (N.D. Ill. 1991).

As for Phillips' Section 1982 claim, Phillips also alleges that racia animus led the Defendants to act in a manner that led to the condemnatio and ultimately the sale of his property. He essentially argues tha Defendants deprived him of the right to "lease" his property, as mentioned in the statute. He also alleges that because his property was condemned and his Section 8 contract cancelled, he was unable to make mortgage payments which ultimately led to foreclosure. Again, putting the factual sufficiency of these claims to one side, the court concludes they do state claims within the scope of Sections 1981 and 1982.

2. Did Defendants Intend to Discriminate Based on Race?

The more difficult question here is whether Phillips has presented evidence of intentional discrimination. In proving a Section 1981 or 1982 claim, a plaintiff may present either direct evidence of discrimination or may instead proceed on the indirect method of proof set forth in *McDonnell Douglas Corp. v. Green.*[9] 411 U.S. 792, 802 (1973). *See Sanghvi v. St Catherine's Hosp., Inc.*, 258 f.3d 570, 577 (7th Cir. 2001) (applying McDonnell Douglass standard to a section 1981 contract case outside the employment context). Although Phillips asserts that Mezera and Shapard made insulting comments to him at the April 29 and June 3 hearings, he has not argued his case as one of "direct evidence," instead

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[9] Section 1981 and 1982 claims are subject to the same methods of proof as race discrimination claims under Title VII of the Civil Rights Act of 1964. Johnson v. City of Fort Wayne, 91 F.3d 922, 940 (7th Cir. 1996).

referring to the shifting-burdens method of proving a disparate treatment claim and comparing Defendants' treatment of him with the treatment accorded to five other property owners in Joliet. To succeed in this approach, Phillips must show that Defendants treated him less favorably than other property owners because of his race. *International Broth. Of Teamsters* v. U.S., 431 U.S. 324, 335, n. 15 (1977). As our Court of Appeals has explained in the employment discrimination context, Phillips is not required to show "complete identity" between himself and the persons with whom he compares himself, but he must show a "substantial similarity." *Radue v. Kimberly-Clark Corp.*, 219 F.3d 612, 618 (7th Cir. 2000).

Phillips alleges that Defendants were motivated by racial animus in bringing about the termination of his HUD Section 8 Moderate Housing Contract and interfering with Phillips' property rights in the rental units at 26-28 Union Street. To prove his case, Phillips claims that he was treated differently than five property owners - James Wyatt, Senovio Benavides, Al Stewart, Ronald Schultz, and Willard Majorsky - whom he claims are all white and all similarly situated to him. (Pl's 56.1 Resp., Ex. K1-K4.) Phillips claims Defendants followed a different set of procedures when the "white" property owners were cited for Joliet code violations than they followed when his property was involved. (*Id.*) Phillips states that when each of these property owners failed to fix the code violations, Defendant Kucharz, pursuant to Section 20-8 of the Code of Ordinances of the City of Joliet, initiated legal proceedings through the Circuit Court of Will County to secure a court order authorizing condemnation of their property. The court understands Phillips to say that he should have been brought to court before his property was condemned and his tenants evicted.

Upon review of the record, the court concludes that the evidence is insufficient to establish Phillips' claim of disparate treatment. First, Phillips presented no evidence that Joliet officials kept records of the racial backgrounds of property owners. In fact, Phillips himself has not offered any proof of the race of the individuals he claims received different treatment. The closest he comes to meeting this burden is presentation of two affidavits of proof of service on James Wyatt. In one of these, the

affiant notes that Wyatt's race is "C," for Caucasian. In the other, the notation reads "W," for white. (Affidavits of Proof of Service 7/27/95 and 11/27/96, Ex. K1 to Pl.'s 56.1 Resp.) Although this is sufficient, for purposes of summary judgment, to establish that Wyatt is white, it does not prove that City of Joliet officials kept records of property owners' race, nor does it prove that race motivated city officials' actions.

Nor does the court believe Phillips has met his burden of showing that the five property owners were treated more favorably than he. Phillips points, first, to the case of Willard Magosky, owner of the Woodcreek Mobile Homes park, and argues that Magosky received more favorable treatment than he did. In 2000, Magosky got into trouble with Joliet Officials because he failed to honor a 1997 annexation agreement with the city in which he agreed to correct environmental infractions by connecting the trailer park to the municipal sewer system. (Guy Tridgell, *City Won't Budge in Trailer Fight*, HERALD NEWS, June23, 2000, at A1, Ex. K4 to Pl.'s 56.1 Resp.) His trailer park was also cited for numerous code violations. (See Lists of Code Violations, Ex. K4 to Pl.'s 56.1 Resp.) Based on the evidence supplied by Phillips, however, the court fails to see how Magosky received better treatment. Toso sent Magosky a Notice of Emergency Condemnation on April 4, 2000 stating that due to the severity of the violations on his property, "the building or affected part has been condemned, placarded, declared unfit for human habitation and must be vacated immediately and cannot be reoccupied until all violations re corrected." The letter notified Magosky that if he and his tenants failed to vacate the premises, a complaint and summons would be issued for him to appear in the Will County Circuit Court. (Notice of Emergency Condemnation of 4/4/00. Ex. K4 to Pl.'s 56.1 Resp.) In June 2000, Richard Bazzarone, Director of Inspection Services for the City of Joliet, ordered Magosky and his tenants to vacate the property. (Notice of Unfitness for Occupancy and Order to Vacate of 6/14/00, Ex. K4 to Pl.'s 56.1 Resp.) On June 14, 2000, City inspectors posted the individual trailers and the entire park with a Notice of Unfitness for Occupancy and an Order to Vacate the Property. On June 22, 2000, Deputy City Manager Shapard presided over a hearing to determine whether arguments against

the postings had merit. (Letter from Shapard to Magosky of 6/22/00, Ex. K4 to Pl.'s 56.1 Resp.) Shapard determined that the posting of the trailer park and individual trailers were valid and upheld the notices and order to vacate. (*Id.*) An article that Phillips himself supplied the court indicates that the city closed the trailer park on July 14, 2000. (Guy Tridgell, *City Won't Budge in Trailer Fight*, HERALD NEWS, June 23, 2000, at A1, Ex. K4 to Pl.'s 56.1 Resp.)

Phillips has not provided the court with evidence that Joliet officials proceeded in court against Magosky before condemning his property and ordering his tenants to vacate. Instead, from this record it appears that both Phillips and Magosky were treated in the same way. Phillips was cited for code violations, two hearings were held, and his property was condemned. Magosky's case followed a similar path. His property was condemned, a hearing was held, and his trailer park was closed. This evidence does not support Phillips's claim that Magosky received different, more favorable treatment.

Evidence concerning James Wyatt is similarly unconvincing. Phillips has provided evidence that James Wyatt owned several properties in the City of Joliet from at least the late 1980s through 2001. Numerous complaints were filed against Wyatt by City of Joliet inspectors for failing to abate code violations and for renting his properties without a valid certificate of inspection. (See generally Ex. K1 to Pl''s 56.1 Resp.) Multiple inspections were conducted of Wyatt's properties, and Wyatt was cited for several code violations over several years. Apparently some of Wyatt's properties were deemed eligible for Certificates of Inspection, although it is not clear whether Wyatt ever paid his overdue fines necessary to receive the certificates. (*See* Final Notice for Payment from Reuben Arthur, Property Maintenance Coordinator of the Neighborhood Services Division of the City of Joliet to Wyatt of 9/16/93, Ex. K1 to Pl.'s 56.1 Resp.) On at least one occasion one of Wyatt's properties was condemned. (*See* Notice to Tenants to Vacate Unsafe Property of 1/18/96, Ex. K1 to Pl.'s 56.1 Resp.) To overcome Defendants' motion for summary judgment, Phillips has to prove that he was treated less favorably than similarly situated individuals. International Broth. of Teamsters, 431 U.S.

at 335, n. 15. Assuming Wyatt and Phillips are similarly situated, the court is at a loss to understand why Phillips, who had two hearings and several opportunities to improve his property, believes he was treated less favorably than Wyatt.

Phillips provides even less material on Benavides, Stewart and Schultz, not enough for the court to conclude whether they were similarly situated to Phillips or whether they received better process from the city. Defendants explain that the legal actions against the property owners cited by Phillips were filed pursuant to Section 20-3 of the Code of Ordinances of the City of Joliet, in which a citizen or tenant may file a complaint, which then leads to an inspection by the City. JOLIET, ILL. CODE § 20-3. Section 20-1 states "[t]his chapter is intended to establish a supplemental procedure for the abatement of nuisances and is not intended to supplant any other procedure set forth by law or ordinance. . . ." Id. § 20-1. In Phillips' case, Defendants, urge, inspections were prompted not by citizen complaints, but by the language of Section 8-152 of the Joliet Code, which requires that "two-family dwellings. . . shall be inspected systematically for compliance with this Code and all other applicable laws." Id. § 8-152. The law makes a number of exceptions, none of which Phillips argues apply to him. Phillips does not rebut Defendants' argument that Section 8-152 required them to inspect his property, and that because no citizen or tenant filed such a complaint against Phillips, Section 20-3 is irrelevant to the case at hand.[10]

City of Joliet officials did eventually proceed in court against Phillips pursuant to Section 20-8 of the Code of Ordinances of Joliet and 65 ILCS 5/31-11-1(a), fourteen months after Phillips claims the city evicted his tenants, to secure an order authorizing the demolition of the property. (Complaint for Injunction, Demolition, and Other Relief, Ex. Z to 56.1

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[10] The court notes that in some instances, the individuals who filed complaints in the cited cases were inspectors for the City of Joliet, including inspector Alexander, the same individual who inspected Phillips' property. (Complaint against James Wyatt of 11/6/96, Ex. K1 to Pl.'s 56.1.) This fact does not defeat summary judgment, however, where Phillips has not demonstrated that Alexander's "citizen's complaint" against Wyatt resulted in more favorable treatment than Phillips received as a target of Alexander's statutorily-mandated inspection.

Resp.) The complaint alleged that the property was abandoned and for various reasons constituted a public nuisance and a dangerous structure. (*Id.*) Phillips is apparently arguing that he should have been taken to court before his property was condemned or his tenants evicted, but as noted, the court is not convinced this procedure was followed with respect to Magosky or Wyatt. Phillips has not provided the court with evidence establishing that Joliet's policy for dealing with code violations in the mid-to-late 1990's was to initiate legal action pursuant to Section 20-3 prior to condemning property or evicting tenants. For the foregoing reasons, the court concludes that Phillips has not provided sufficient evidence to show he was treated less favorably than the other property owners he cites.

Phillips points to other actions taken by Defendants to prove he was the victim of racial discrimination. He alleges that there was no reason for Defendants to inspect his building when they did because his inspection certificate was valid until November 23, 1998. The implication is that Defendants purposely sent an inspector to harass him. The language of the certificate Phillips relies on itself defeats this argument, however. The certificate of inspection provided to the court states that "[t]his Certificate expires on the above date [11/23/98] unless sooner suspended or revoked. This Certificate is not a representation, warranty, or guarantee that the dwelling inspected meets all of the requirements for such dwellings." (Certificate of Inspection, Ex. A to Pl.'s 56.1 Resp.) The language "unless sooner suspended or revoked," if it means anything, must mean that interim inspections were anticipated. In any event, even if Phillips is correct that the certificate can be interpreted as excusing his property from any inspections for a four-year period, he has not demonstrated that the City's decision to conduct an inspection several months earlier was the product of racial discrimination.

Phillips' final piece of evidence in support of his claims is a post-hearing letter to Al Stewart (one of the allegedly white property owners), informing Stewart of the determinations made at his March 15, 2001 hearing to discuss the nonpayment of rental fees.
(Letter from Shapard to Stewart of 3/20/01, Ex. G to Pl.'s 56.1 Resp.) Phillips complains that he did not receive this "customary" post-hearing

letter. Defendants counter that the correspondence sent to Al Stewart was not customary in 1998, when Phillips' hearings took place. (Defs." Resp. ¶ 12.) Phillips does not provide evidence to controvert this assertion.

CONCLUSION

Accepting Phillips' rendition of the facts as true, the court concludes that he has not met his burden of proving a prima facie case of racial discrimination. Although he has successfully shown that he is a member of a racial minority and that his claims fall within the purview of Sections 1981 and 1982, Phillips has not shown discriminatory intent on the part of city officials. Morris, 89 F.2d at 413. Phillips has never challenged the accuracy of the inspection reports showing that his rental property suffered from numerous uncorrected code violations. Nor has he demonstrated that Joliet officials accorded more favorable treatment to similarly situated white property owners. Summary judgement for Defendants Mezera, Toso, Shapard and Kucharz is therefore appropriate. Because none of the city officials can be found liable, summary judgment must also be granted to Defendant City of Joliet.

Dated: November 25, 2002

REBECCA R. PALLMEYER
United States District Judge

GARFIELD PHILLIPS
Plaintiff,

v.

JOHN MEZERA, JAMES SHAPARD, JOYCE TOSO,
MARY KUCHARZ and CITY OF JOLIET
Defendants.

No. 00 C 3348

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

October 31, 2001, Decided

MEMORANDUM OPINION AND ORDER

Plaintiff Garfield Phillips ("Phillips"), pro se, claims that Joliet officials violated his civil rights when they declared his rental property unfit for human habitation and evicted his tenants. On February 21, 2001, this court dismissed Plaintiff's amended complaint for failure to state a claim, but granted him leave to file a second amended complaint if he could cure the deficiencies in the earlier pleading. On March 14, 2001, Plaintiff filed his second amended *pro se* complaint against the City of Joliet and Joliet officials John Mezera ("Mezera"), James Shapard ("Shapard"), Joyce Toso ("Toso"), and Mary Kucharz ("Kucharz"). In the second amended complaint, Plaintiff again alleges that Defendants violated his civil rights when they evicted tenants from rental property he owns and interfered in the renewal of his HUD Section 8 Moderate Housing Contract. He further alleges that Defendants negligently failed to comply with the City's own policies. Defendant has once again moved to dismiss for failure to state a claim.

A *pro se* complaint is held to "less stringent standards than formal pleadings drafted by lawyers, "*Haines v. Kerner*, 404 U.S. 519, 520 (1972), and can be dismissed for failure to state a claim only if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). A *pro se* complainant can, nevertheless "plead himself out of court" by pleading facts that undermine the allegations set forth in his complaint. See *Gutierrez v. Peters*, 111 F.3d 1364, 1374 (7th Cir. 1997). For the reasons set forth below, Defendants' motion is granted in part and denied in part.

FACTS

In considering Defendants' motion to dismiss, the court presumes that all allegations in the Plaintiff's complaint are true. *Leatherman v. Tarrant County Narcotics & Intelligence Unit*, 507 U.S. 163, 164-65 (1993). To provide as complete a chronology as possible, the court refers not only to the allegations of the Second Amended Complaint, but also to the First Amended Complaint. In December 1994, Plaintiff purchased a two-unit rental property at 26-28 Union Street ("property") in Joliet. (Second Amended Complaint ¶ 12.) Plaintiff alleges that two items were transferred to him as part of the property transaction: a four-year Certificate of Inspection issued by the City of Joliet to the previous owner in December 1994 and a fifteen-year HUD Section 8 Moderate Housing Contract issued on April 1, 1985 by the Housing Authority of Joliet ("HAJ") entitling Plaintiff to maintain pre-existing tenants in the property. (*Id.* ¶¶ 11, 14.)

On January 16, 1998, an inspector for HAJ conducted an inspection of Phillips' property and issued a Summary of Inspection listing various repairs to be made to the property by February 23, 1998. (*Id.* ¶ 19; HAJ Summary of Inspection, Ex. A to Second Amended Complaint.) On March 2, 1998, an inspector for HAJ provided Plaintiff with an Approved Summary of Inspection showing he had completed the repairs required by the first inspection. (Second Amended Complaint ¶ 20; HAJ Summary of

Inspection, Ex. B to Second Amended Complaint.)

On March 11, 1998, Kenneth Alexander ("Alexander"), an inspector from Joliet's Neighborhood Services Department posted a "Bldg. Code document" on Phillip's property. Although Plaintiff has not otherwise described the document, he alleges that Alexander posted it because he could not enter the property to conduct an inspection. (Second Amended Complaint ¶ 21.) On March 12, 1998, Alexander told Plaintiff he would send written notification of the re-scheduled inspection. (*Id.* ¶ 22.)

On April 29, 1998, Joliet's Neighborhood Service Department conducted a hearing regarding Phillips' property, pursuant to notice. (*Id.* ¶ 23.) Plaintiff's complaint does not identify the purpose, findings, or outcome of this hearing. In his earlier complaint, Plaintiff did allege the Defendant Toso, the City's Property Maintenance Coordinator, advised him during the hearing "that he had not paid the $220.00 Inspection Fees and that there existed some minor Bldg. Code violations that needed to be corrected" at the property. (Amended Complaint at ¶ 26(a).) Defendant Toso informed Plaintiff that he would not be given additional time to cure the violations. (*Id.* ¶ 26(c).) Plaintiff claims that at the hearing, a police officer confirmed that the exterior of the property was in good condition and that there were no public disturbances calls regarding the property. (Second Amended Complaint ¶ 24.) Plaintiff also alleges that at the hearing, Defendant Shapard, in a "loud and intimidating voice" told him, "I'm gonna put you out of business, we're gonna shut you down." *(Id.* at ¶ 25(a).)

A re-inspection of Plaintiff's property took place the following day, April 230, 1998. (Notice of Property Maintenance Code Violations, Ex. C to Second Amended Complaint.) Plaintiff received a "Notice of Property Maintenance Code Violations" dated May 5, 1998 from Defendant Toso resulting from that inspection. The Notice explains that Plaintiff's property had "recently been inspected for compliance with BOCA National Property Maintenance Code [as] required by Section 8-152 of the Joliet Code of Ordinances." (Second Amended Complaint at ¶ 26, Ex. C to Second Amended Complaint.) The notice contained a list of 26 code violations discovered during the inspection-including broken

windows, a defective stove, defective ceiling and floor coverings, and broken or missing electric fixtures-and set forth a recommended procedure for correcting each violation. (*Id.*) The Notice explained Plaintiff had "the right to a hearing concerning [the] notice" and in order to exercise such right he must file a "written hearing request with the City Manager within 72 hours of receiving [the] notice." (*Id.*) Finally, the Notice explained that the violations set forth in it were only those pertaining to the BOCA National Property Maintenance Code, and correction those violations would not relieve Plaintiff from bringing property into full compliance with all applicable legal requirements, including the Joliet Zoning Ordinance. (*Id.*) The record does not indicate what exactly the "BOCA National Property Maintenance Code" is, nor has Plaintiff alleged that he filed a time request for a hearing.

Around June 3, 1998, Plaintiff paid an inspection fee of $220.00 for his property and asked Defendant Shapard, the Deputy City Manager, for further additional time to correct the alleged building code violations. (Amended Complaint ¶ 26(g).) Shapard responded by saying, "I cannot reverse my decision, as a matter of fact I spoke with Mezera and informed him that I condemned the building and Mezera jumped for joy." (*Id.* ¶ 26(g); Second Amended Complaint ¶ 27(a).) After this conversation with Shapard, Plaintiff encountered Defendant Mezera, Joliet City Manager, and informed him that Plaintiff had Chapter 13 bankruptcy protection and that the HAJ had granted him a year re-certification for his HUD Section 8 Housing Contract for the property. (Amended Complaint ¶ 26(j), (m); Second Amended Complaint ¶ 27.) Mezera responded by asking Plaintiff if he was "watching the Bulls when he should have been getting his property repaired." (Second Amended Complaint ¶ 27(b).) Mezera urged Plaintiff to "give the house back to the bank" and accused him of renting to gangbangers . . . [who] are selling drugs from that house." (*Id.*) Mezera also threatened to "call HAJ and have [Plaintiff} Section 8 certification cancelled because there should not be any Section 8 tenants living in the 28 Union Street Premises." (Amended Complaint ¶ 26(m).)

Also around June 3, 1998, City Officials allegedly terminated water service to the property and directed police to tell Phillips' tenants they had

to move out. (Second Amended Complaint ¶ 28.) Plaintiff alleges these actions were taken "without any lawful justification" but Plaintiff does not claim he had corrected any outstanding code violations brought to his attention either at the April 29 hearing or during the April 30 BOCA inspection. (Id. ¶ 28.) On June 6, 1998, Plaintiff received a Notice of Emergency Condemnation. (*Id.* ¶ 31; Notice of Emergency Condemnation, Ex. E to Second Amended Complaint.) That same day Plaintiff's tenants received a Notice to Tenants to Vacate Unsafe Property. (Second Amended Complaint ¶ 31; Notice to Tenants to Vacate Unsafe Property, Ex. F to Second Amended Complaint.) Around June 8, 1998 Plaintiff presented Shapard with a notice of appeal from the condemnation decision. (Second Amended Complaint ¶ 32; Phillips letter, Ex. G to Second Amended Complaint.) Defendant Kucharz, Assistant Corporate Counsel for Joliet, promised Plaintiff that there would be a hearing on his appeal after Mezera's return from an out of town trip, but no such hearing has ever taken place. (*Id.* ¶¶ 33-34.)

Plaintiff alleges "that prior to Defendant Joliet's forceful removal of the original door locks from off the doors and the placing of Defendant Joliet's padlocks on the doors of . . . [property]. . . Defendant Joliet did not convene a formal administrative hearing on [Plaintiff's] timely filed Notice of Appeal. . . as provided to other citizens under similar circumstances." (*Id* ¶ 35.) He also alleges that Defendants failed to obtain a court order from the Circuit Court of the Twelfth Judicial Circuit authorizing action against Plaintiff's
property as required by 65 ILCS 5/11-31-1(a).
(*Id.* ¶ 36.) Plaintiff admits that code violations existed at his property but contends they "did not rise to a critical level which necessitated the need to either declare the property as being unsafe for occupancy. . . ." (*Id.* ¶ 39.)

Around July 10, 1998, the HAJ issued Plaintiff a written notice terminating the March 2, 1998 recertification of his HUD Section 8 Moderate Housing Rehabilitation Contract because "documentation

received from the City of Joliet and the hearings held with [Plaintiff] and the City of Joliet [showed Plaintiff did] not have an inspection permit to rent [the property] and the property is considered unfit for human habitation." (*Id.* ¶ 37; Housing Authority letter, Ex. I to Second Amended Complaint.) The HAJ concluded that is was required to terminate [Plaintiff's] Moderate Rehabilitation Contract and use that funding to allow [Plaintiff's tenant] to relocate." (Second Amended Complaint; Ex. I to Second Amended Complaint.) Plaintiff alleges that as "a direct and proximate result of defendant(s) . . .concerted actions and/or inaction . . . Phillips' HUD Section 8 Moderate Housing Contact was terminated . . . " (Second Amended Complaint ¶ 41.)

Plaintiff believes these allegations support five claims. In Count I, he alleges a violation of the guarantee under 42 U.S.C. § 1981 (a) that he have equal rights to make and enforce contracts as white citizens. Count II alleges a violation of the guarantee under 42 U.S.C. § 1982 that he have the same rights to own property as enjoyed by white citizens. Count III is a claim under 42 U.S.C. § 1983 that the individual Defendants have deprived him of property without due process. Count IV asserts a similar claim against Defendant City of Joliet. Count V alleges that Defendants were negligent in failing to act with reasonable and due care, and to comply with City Ordinances and Illinois statutes.

Defendants have moved to dismiss all five claims for failure to state a claim for relief. They contend that Plaintiff was not denied due process since he was granted a hearing concerning code violations at his property on April 29, 1998. To the extent that Phillips' allegations concerning state law establish a claim, Defendants urge that because Joliet is an Illinois home-rule municipality pursuant to Article VII of the Illinois Constitution, they are not required to adhere to state laws contrary to local ordinances. Therefore Defendants were not required to obtain a court order to "condemn" Plaintiff's property. They also assert that Plaintiff's allegations do not support the claim that he was treated differently than white property owners under similar circumstances and that any alleged negligence in

onnection with failure to follow City policies does not support a claim for elief. The court address these arguments in turn.

DISCUSSION

A. Unequal Treatment

In Counts I and II, Plaintiff alleges violations of 42 U.S.C. §§ 1981(a) and 1982, which guarantee that all citizens will have the same rights as white citizens to make and enforce contracts and to lease and convey real property. Because of their common origin in the Civil Rights Act of 1866 and their common purpose, § 1981 and § 1982 are generally construed in tandem. See *Tillman v. Wheaton-Havens Recreation Ass'n, Inc.*, 410 U.S. 431, 439-40 (1973). To state a claim under either of these provisions, Plaintiff must allege that 1) he is a member of a racial minority; 2) Defendants has an intent to discriminate on the basis of race; and 3) the discrimination concerned activities enumerated in the statutes (i.e. making and enforcing a contract or owning property). *Morris v. Office Max, Inc.*, 89 F.3d 411, 413 (7th Cir. 1996).

In Counts I and II, Plaintiff alleges that Defendants were motivated by "racial animus" in bringing about the termination of Plaintiff's HUD Section 8 Moderate Housing Contract and interfering with Plaintiff's property rights in the rental units. Plaintiff further alleges that Defendants "have never done [such things] to any other citizen either under similar circumstances or similarly situated." Read narrowly, Plaintiff's complaint alleges discrimination, without explicitly identifying an underlying racial basis. In assessing a motion to dismiss, however, it is not this court's job to read complaints narrowly. Within the context of Plaintiff's complaint, it can be reasonably inferred that Plaintiff intends to attribute the allegedly inconsistent conduct on the part of Joliet officials to their "racial animus". In light of the obligation to liberally construe complaints by pro se plaintiff's, McCormick v. City of Chicago, 230 F.3d 319, 325 (7th Cir.

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2001), and the Seventh Circuit's holding that complaints may plead conclusions without alleging all the facts entailed by the claim, *Bennett v. Schmidt*, 153 F.3d 516, 518, 518 (7th Cir. 1998), the court denies Defendants' motion to dismiss Plaintiff's § 1982 claims.

B. Deprivation without Due Process

In Counts III and IV, Plaintiff claims Defendants deprived him of his property rights without due process. First, Plaintiff contends he was deprived of a protected interest in renting his property without due process because he was not granted a post-deprivation hearing after his tenants were evicted. Defendants point out that Plaintiff's own allegations show he was given notice and an opportunity to be heard, fulfilling the mandates of due process, before his tenants were evicted. Plaintiff's earlier amended complaint and his ore recent complaint allege that he was granted a hearing on April 29, 1998 and that code violations were addressed at this meeting. Violations were again brought to the Plaintiff's attention after a re-inspection on April 30, 1998. Plaintiff was advised of his right to a hearing in order to contest these violations. In his very detailed complaint, he does not allege having requested such a hearing.

Plaintiff's property was then declared unfit for human habitation and condemned , after which Plaintiff filed a timely appeal. [1] Plaintiff alleges that although Defendant Kucharz told him there would be a hearing on Plaintiff's appeal, no such hearing ever took place. Defendants' alleged failure to conduct a hearing on Plaintiff's challenge to the condemnation of his property is puzzling. Notably, however, Plaintiff's own allegations demonstrate that he was granted a pre-deprivation hearing, and he has not alleged that he had any new basis for further challenging Defendants'

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[1] The notice informing Plaintiff that his prperty had been condemned mentions that his right to "seek review, modification or withdrawal' exists for only 72 hours from receipt of the letter. (Ex. E to Second Amended Complaint.) The text of the notices does not mention a hearing, much less explicitly create the right to one.

decision to evict his tenants. He has not even alleged that his property was free of the building code violations that resulted in the condemnation; instead, he alleges that the violations were not so serious that the property was unfit for habitation. At the pre-deprivation hearing on April 29, and again on June 3, 1998, Plaintiff appealed to Joliet officials for additional time to cure the violations. Their refusal to allow additional time dies not constitute a denial of due process. Nor does their disagreement with Plaintiff's assessment of the seriousness of the code violations indicate that his constitutional rights have been violated.

Plaintiff next contends he was deprived of a protected property interest in renting his property without due process because Defendants did not obtain a court order before condemning his property as required by 65 ILCS 5/11-31-1. Defendants observe that because the city of Joliet is a home-rule municipality as defined by Article VII of the Illinois Constitution, it has the power to legislate concurrently with, and contrary to, the State of Illinois. Once the City adopts ordinances contrary to Illinois State statutes, the ordinances prevail unless the General Assembly has specifically preempted a home rule exercise of power. See generally *People of the State of Illinois ex rel. Ryan v. Village of Hanover Park*, 311 Ill. App. 3d 515, 524-25, 724 N.E.2d 132, 138 (1st District. 1999); *Demick v. City of Joliet*, 135 F. Supp.2d 921 (N.D. Ill.2001). No such preemption provision appears in this state statute cited by Plaintiff and therefore if the City has legislated otherwise, it was not necessary for Defendants to obtain a court order. Even if the City has not legislate otherwise, the mere fact that Defendants may have violated some provision of state law does not necessarily establish a deprivation of federal rights. See *Pierce v. Village of Divernon*, 17 F.3d 1074, 1079 (7th Cir. 1994) ("Plaintiffs' due process claim [challenging Village's demolition of their home] does not necessarily require us to determine whether the Village complied with the requisite Illinois procedures, but only whether the procedures actually followed were consistent with due process.") The court concludes that Plaintiff's complaint does not state a claim for deprivation of due process.

C. Negligence

In Count V, Plaintiff alleges that City officials acted negligently in failing to carry out the City's own stated policies. Plaintiff alleges that the individual Defendants breached three duties: a)to comply with the aforementioned 65 ILCS 5/11-31-1.; b)to comply with Defendant Joliet's policy providing for formal Administrative hearing on timely filed notice of appeal; and c) to comply with a city ordinance in promoting faith and confidence of the citizens in their government.

The court concludes that none of these allegations adequately states a claim. First, for the reasons mentioned above, it is not clear that the individual Defendants had a legal duty to comply with the Illinois statute if it conflicted with an ordinance in their home-rule municipality. Second, there is no legal basis for Plaintiff's clam that Joliet had a policy of providing formal administrative hearings for time appeals to condemnation notices. Plaintiff's allegation of such a policy rests on a misreading of the Notice. Finally, even if Plaintiff has correctly identified a municipal duty to promote the faith of citizens in good government, this court concludes that there is no private right of action to enforce such a duty. [2]

CONCLUSION

Defendants' motion to dismiss the Second Amended Complaint (Doc. No. 25-1) is granted in part and denied in part. Plaintiff's

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[2] Without ruling on an issue not briefed by the parties, the Court notes that even a cognizable claim of negligence against Defendants might be barred by the Illinois Tort Immunity Act. *See, e.g.*, 745 ILCS 10/2-201 (providing that "a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused"); and 745 ILCS 10/2-109 (providing that a local public entity is not liable "for an injury resulting from an act or omission of its employee where the employee is not liable"). *See also Village of Bloomingdale v. CDG Enters., Inc.*, 196 Ill.2d 484, 493, 752 N.E.2d 1090, 1098 (2001) (under Illinois Tort Immunity Act, statutory immunity applies even where conduct is motivated by "corrupt or malicious motives").

allegations do not support a claim that was deprived of a property interest with due process. Accordingly, Counts III and IV of Plaintiff's Second Amended Complaint are dismissed with prejudice. Similarly, Plaintiff does not state a legally cognizable claim in tort, and Count V of his Second Amended Complaint is dismissed with prejudice. Plaintiff has stated a cognizable claim of racial discrimination, however, and Defendants' motion to dismiss Counts I and II of the Second Amended complaint are denied. Defendants are directed to answer the allegations set forth in those Counts on or before November 19, 2001.

October 31, 2001

Rebecca R. Pallmeyer
United States District Judge